

ESTTA Tracking number: **ESTTA612896**

Filing date: **06/30/2014**

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

Proceeding	92058315
Party	Plaintiff State of Michigan
Correspondence Address	JAMES L SCOTT WARNER NORCROSS & JUDD LLP 111 LYON STREET NW 900 FIFTH THIRD CENTER GRAND RAPIDS, MI 49503 UNITED STATES trademarks@wnj.com, GallagherJ3@michigan.gov, BrickeyD@michigan.gov, RestucciaE@michigan.gov, JacksonJ5@michigan.gov
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	James L. Scott
Filer's e-mail	trademarks@wnj.com, GallagherJ3@michigan.gov, BrickeyD@michigan.gov, RestucciaE@michigan.gov, JacksonJ5@michigan.gov
Signature	/JS/
Date	06/30/2014
Attachments	Petition to Cancel.pdf(275999 bytes)

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

State of Michigan)	
)	
Petitioner,)	Reg. Nos.: 3992159
)	3348635
)	
v.)	
)	
M22, LLC,)	Proceeding: 92058315
)	
)	
Registrant.)	
<hr style="width: 40%; margin-left: 0;"/>)	

SECOND AMENDED CONSOLIDATED PETITION TO CANCEL

Petitioner State of Michigan, by and through its attorneys, Attorney General Bill Schuette, Assistant Attorney General James D. Gallagher, and Special Assistant Attorney General James L. Scott, brings this action to cancel Registration Nos. 3,992,159 and 3,348,635 owned by Registrant M22, LLC.

Petitioner believes that it has been and will continue to be damaged by the registration of the sign shown in United States Trademark Registrations Nos. 3348635, registered on December 4, 2007 (the “**M22 Online Registration**”), and 3992159, registered on July 12, 2011 (the “**M-22 Registration**”). Accordingly, Petitioner hereby petitions to cancel the M-22 Registration and the M22 Online Registration on the following grounds:

Background

1. The State of Michigan's highway route marker sign for Michigan

Highway M-22 –  – is identical to the sign  in the M-22 Registration and the M-22 Online Registration (each the “**M-22 Sign**”).

2. Petitioner organized its highway system by number in 1919, using the design of a white diamond containing a black letter “M” at the top with the assigned highway number below.¹

3. The mark registered in the M22 Online Registration consists of an unmounted square street sign with a centered diamond containing M 22 and with “M22online.com” in the bottom border of the square. “M22online.com” is a material part of the mark registered in the M22 Online Registration.

4. Travelers have for many years associated the M-22 Sign with Petitioner, its traffic and road services, and the road and the area immediately surrounding the M-22 highway. The M-22 highway is an integral part of the Grand Traverse Bay area and Northwestern Michigan region, which is home to some of the most popular destinations for recreation, leisure, and relaxation that Petitioner has to offer.

5. Through Petitioner's use of the M-22 Sign, the sign has come to represent and describe the culture of Northern Michigan. That culture is one of

¹For additional in-depth historical analysis, see Michigan Highways: The Great Routes of the Great Lakes State <<http://www.michiganhighways.org>> (accessed May 8, 2012).

recreation and relaxation, vacations, cabins, lakes, Michigan wine, cherry orchards, sand dunes, water sports, skiing, hiking, and similar amenities immediately adjacent to the roadside. These associations come from Petitioner’s use of the M-22 Sign and maintenance of the highway for travelers for nearly a century.

6. Like other individuals who have travelled the M-22 highway, Registrant’s owners “fell in love with M-22, literally while travelling along M-22 countless times in pursuit of wind, waves, and perfect beaches for their beloved sport of kiteboarding. The M-22 image sparked something in the brothers that reminded them of natural beauty, good times, and positive energy[.]”²

7. Through Petitioner’s use of the M-22 Sign, the M-22 Sign has become a symbol of that region of Petitioner serviced by the M-22 highway.

8. Registrant’s owners acknowledge that “M-22 is not just a road; it is a way of life.”³

9. Petitioner’s State Highway M-22 is a picturesque and well-traveled 116-mile drive along Lake Michigan through Manistee, Benzie, and Leelanau Counties. A 64 mile segment of M-22 in Leelanau County has been designated a Michigan Scenic Heritage Route under 1993 PA 69, MCL 247.951 et seq. The “heritage route” designation may be applied to “[c]ertain portions of the state trunkline highway system [that] are so uniquely endowed by natural aesthetic, ecological, environmental, and cultural amenities immediately adjacent to the

² See Exhibit A to USPTO Trademark Application No. 85041051, a copy of the M-22 Website, About Us, available at <<http://m22.com/about-us>> (accessed September 16, 2013).

³ *Id.*

roadside that their use by a larger percentage of the motoring public, particularly during the recreational season, is for the experience of traveling the road rather than as a route to a destination.” MCL 247.953.

10. Registrant, through its owners, has acknowledged that “[M-22] is marked by the simplicity and appreciation for natural wonders such as bays, beaches, and bonfires, dunes and vineyards, cottages, friends and family everywhere.”⁴

11. Petitioner’s M-22 highway, which is designated by the M-22 Sign, is one of the most scenic in Michigan. For over 93 years, generations of travelers have benefited from the services provided by Petitioner through the M-22 Sign and have enjoyed all of the services and attractions to which the M-22 highway provides access.

12. Registration of the M-22 Sign conveys at a prima facie exclusive right to use the M-22 Sign. Such registration is a source of damage and injury to Petitioner.

**Marks in Registrations 3348635 and 3992159
Not in Lawful Use in Commerce**

13. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through 12 of the Petition as set forth above, as if fully set forth herein.

⁴ *Id.*

14. Trademark Manual of Examining Procedure (TMEP) §1205.01

provides:

Various federal statutes and regulations prohibit or restrict the use of certain words, names, symbols, terms, initials, marks, emblems, seals, insignia, badges, decorations, medals, and characters adopted by the United States government or particular national and international organizations. These designations are reserved for the specific purposes prescribed in the relevant statute and must be free for use in the prescribed manner.

15. Both federal and state laws establish a uniform system of traffic control devices. In 1971, the United States Department of Transportation, Federal Highway Administration issued regulations designed to bring uniformity to the roadways of the United States pursuant to the Highway Safety Act of 1966. These regulations are set forth in the federal Manual on Uniform Traffic Control Devices (“MUTCD”). The MUTCD is the law governing all traffic control devices.

16. The MUTCD is promulgated by the United States Department of Transportation and establishes “the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel,” 23 CFR 655.603(a); 23 CFR Part 655, Subpart F, “in accordance with” 23 USC 109(d) and 23 USC 402(a).⁵ See 23 CFR 655.603.

⁵ The MUTCD is adopted by reference under 23 CFR §655 in accordance with 23 USC 109(d) and is approved as the national standard for designing, applying, and planning traffic control devices. 23 USC 109(d) gives the Secretary of Transportation the authority to approve the “location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals” on any highway project involving the use of federal funds. 23 USC 402(a) mandates that each state create “a highway safety program . . . designed to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom” and requires that each state program be “in accordance with uniform guidelines promulgated by the Secretary.”

17. The MUTCD under the Highway Safety Act of 1966 regulates the use of traffic control device designs like Petitioner’s M-22 Sign. The MUTCD provides that the M-22 Sign is in the public domain and not subject to trademark protection:

Any traffic control device design or application provision contained in this Manual shall be considered to be in the public domain. Traffic control devices contained in this Manual shall not be protected by a patent, trademark, or copyright, except for the Interstate Shield and any items owned by [the Federal Highway Safety Administration]. [Emphasis added.]⁶

18. To remain eligible for federal highway and highway safety program funds, a state must adopt the federal MUTCD as a state regulation, adopt a state MUTCD that is approved by the Secretary of Transportation as being in “substantial conformance” with the federal MUTCD, or adopt the federal MUTCD in conjunction with a state supplement. See 23 USC 109(d), 23 USC 402(c); 23 CFR 655.603(b)(3).

19. Consistent with these federal provisions under the Highway Safety Act of 1966, the Michigan Vehicle Code, 1949 PA 300, MCL 257.1 et seq., requires the Michigan Department of Transportation (“MDOT”) and the Michigan State Police to adopt and maintain a uniform system of traffic control devices,” which includes all signs,⁷ that conforms with the federal MUTCD. See MCL 257.608.⁸

⁶ The federal MUTCD is available at <http://mutcd.fhwa.dot.gov/kno_2009.htm> (accessed September 17, 2013).

⁷ The term “traffic control devices” “means *all signs*, signals, markings, and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.” MCL 257.70 (emphasis added).

20. In compliance with the Michigan Vehicle Code, MDOT has adopted versions of the Michigan MUTCD that are consistent with the federal manual regarding guidelines on how to create and utilize Michigan traffic control devices.⁹ The federal manual suggests a default design for state highway route markers with a white circle imposed on a black square featuring the respective highway number in black. But it allows states the option to create a unique design, and Michigan chose to maintain its historic design  – the M-22 Sign – using a white diamond rather than a circle, and a block “M” over the black number.

21. The M-22 Sign is a traffic control device regulated by the MUTCD under the Highway Safety Act of 1966.

22. Under the MUTCD, the M-22 Sign shall not be protected as a trademark.

23. The MUTCD under the Highway Safety Act of 1966 reserves the M-22 Sign for the specific purpose of functioning as a traffic control device.

24. Granting exclusive rights to use the M-22 Sign under the Lanham Act, regardless of associated goods and services, violates the provisions of the federal Highway Safety Act of 1966 regulations under the MUTCD. Under a basic principle of statutory construction, “(w)here there is no clear intention otherwise, a specific

⁸ The federal MUTCD is available at <http://mutcd.fhwa.dot.gov/kno_2009.htm> (accessed September 17, 2013).

⁹ MDOT’s version of the MUTCD is available at <<http://mdotcf.state.mi.us/public/tands/plans.cfm>> (accessed September 17, 2013).

statute will not be controlled or nullified by a general one, regardless of the priority of enactment.” *Morton v. Mancari*, 417 U.S. 535, 550-551, 94 S.Ct. 2474, 2482-83, 41 L.Ed.2d 290, 300-01. P. 1993. Here, the federal Highway Safety Act of 1966, as promulgated under regulations of the MUTCD, specifically states that “[t]raffic control devices contained in this Manual shall not be protected by a patent, trademark, or copyright”

25. Registrant’s use and registration of the M-22 Sign as a trademark is unlawful and violates the provisions of the federal Highway Safety Act of 1966 regulations under the MUTCD.

26. Granting exclusive rights to use the M-22 Sign under the Lanham Act, regardless of any associated goods and services, circumvents copyright law. See *Dastar Corp v Twentieth Century Fox Film Corp*, 539 US 23, 34; 123 S Ct 2041; 156 L Ed 2d 18 (2003). See also *Comedy III Productions, Inc v New Line Cinema*, 200 F3d 593, 595; 53 USPQ2d 1443 (CA 9, 2000) (“[T]he Lanham Act cannot be used to circumvent copyright law. If material covered by copyright law has passed into the public domain, it cannot then be protected by the Lanham Act without rendering the Copyright Act a nullity”).

**The Marks in Registrations 3348635 and 3992159
Have Been Abandoned**

27. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through 26 of the Petition as set forth above, as if fully set forth herein.

28. A mark shall be deemed to be “abandoned” under the 15 U.S.C. § 1127 “[w]hens its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances.”

29. The mark in use by Registrant is not the mark in the M22 Online Registration.

30. On information and belief, Registrant stopped use of the mark in the M22 Online Registration in association with the goods identified in the M22 Online Registration with no intent to resume such use.

31. On information and belief, Registrant abandoned the mark in the M22 Online Registration for apparel and any goods in Class 25 within the meaning of 15 U.S.C. § 1127.

32. A mark shall be deemed to be “abandoned” under the 15 U.S.C. § 1127 “[w]hen any course of conduct of the owner, including acts of omission as well as commission, causes the mark to . . . lose its significance as a mark.”

33. On information and belief, Registrant has promoted the M-22 Sign as a symbol of Petitioner’s Northwestern region.

34. On information and belief, Registrant has sold thousands of stickers of consisting solely of the M-22 Sign, allowing purchasers to display the alleged mark on and in connection with vehicles and other property, without restriction, in any manner. Registrant's allowing the M-22 Sign to be used and displayed without restriction has caused the M-22 Sign to lose any significance it may have had as a mark and source identifier such that individuals who see the alleged mark see the M-22 Sign merely as a geographic indicator, a type of ornamentation, or a method of identifying with the Norwestern part of the State of Michigan.

35. On information and belief, Registrant has sold thousands of souvenirs bearing the M-22 Sign, such that the sign's placement on goods as ornamentation has caused the M-22 Sign to lose any significance it may have had as a mark and source identifier such that individuals who see the alleged mark see the M-22 Sign merely as a geographic indicator, a type of ornamentation, or a method of identifying with the Norwestern part of the State of Michigan.

False Suggestion of a Connection - §2(a)
Registrations 3348635 and 3992159

36. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through 35 of the Petition as set forth above, as if fully set forth herein.

37. The mark registered in the M-22 Registration is identical to Petitioner's highway route marker sign.

38. The mark registered in the M22 Online Registration is identical to Petitioner's highway route marker sign, except for the words 'M22ONLINE.COM.'

39. The M-22 Sign is recognized as Petitioner's highway route marker sign.

40. The M-22 Sign is associated with a particular region within Petitioner's borders and the amenities that the region and Petitioner offers. The M-22 Sign points uniquely and unmistakably to the State of Michigan.

41. Registration of the M-22 Sign is improper under Section 2(a) of the Lanham Act, 15 USC § 1052(a), as it falsely suggests a connection with the State of Michigan.

42. Petitioner is not connected with the activities performed by Registrant under the M-22 Sign.

43. The fame or reputation of Petitioner is such that, when the M-22 Sign is used with Registrant's goods or services, a connection with Petitioner is presumed.

44. In the 93 years in which the M-22 Sign has been used by Petitioner, travelers have come to associate the M-22 Sign with those "natural aesthetic, ecological, environmental, and cultural amenities immediately adjacent to the roadside . . ." MCL 247.953. Likewise, the M-22 Sign has long been, and continues to be, unmistakably associated with Petitioner and Northern Michigan.

Misrepresentation of Source – §14(3)
Registrations 3348635 and 3992159

45. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through 44 of the Petition as set forth above, as if fully set forth herein.

46. On information and belief, Registrant adopted and used Petitioner's M-22 Sign as its own for the very reason that the M-22 Sign points unmistakably to Petitioner.

47. On information and belief, Registrant adopted and used Petitioner's M-22 Sign as its own, because the M-22 Sign is clearly associated with Petitioner.

48. On information and belief, Registrant adopted and used Petitioner's M-22 Sign as its own, because of the goodwill associated with Petitioner's M-22 Sign.

49. Registrant has adopted and used Petitioner's M-22 Sign without any modification.

50. On information and belief, Registrant has itself indicated that the reason it adopted the M-22 Sign was because it refers to Petitioner and its Northwestern region.

51. According to one of Registrant's founders, Matt Myers, "[w]e needed to create a brand that represents this region."

52. On information and belief, Registrant adopted Petitioner's M-22 Sign because it "represents the way of life here in Northern Michigan."

53. Registrant's use of Petitioner's M-22 Sign was deliberately designed to trade on consumers' association of the M-22 Sign with Petitioner and with the goodwill created by Petitioner in the M-22 Sign. That was intentional, and Registrant deliberately chose the M-22 Sign because of the associated goodwill created by Petitioner.

54. Registrant has copied all aspects of Petitioner's M-22 Sign and has deliberately used the M-22 Sign on goods, namely apparel, a souvenir shop, and other souvenir items, to associate Petitioner with the source of the goods and services, when Petitioner is not the source of the goods and services provided by Registrant. Registrant blatantly misused the M-22 Sign in a manner that was calculated and designed to trade on the goodwill created by Petitioner in the M-22 Sign. Registrant's use in this manner misrepresents the source of Registrant's goods and services.

55. On information and belief, consumers purchase goods decorated with the M-22 Sign, because the M-22 Sign points to Petitioner as the source.

56. The M-22 Sign in the M-22 Registration and in the M-22 Online Registration is being blatantly misused by Registrant to misrepresent the source of the goods or services on or in connection with which the mark is used, as prohibited under Trademark Act section 14.

57. Registrant's use and registration of the M-22 Sign violate Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3), because the M22 Online Registration and the M-22 Registration are being used by, or with the permission of, Registrant to

misrepresent the source of the goods and services on or in connection with which registration.

Flag, Insignia – §2(b)
Registrations 3348635 and 3992159

58. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through 57 of the Petition as set forth above, as if fully set forth herein.

59. The M-22 Sign is an insignia of the State of Michigan.

60. Registration of the M-22 Sign is improper under Section 2(b) of the Lanham Act, 15 USC § 1052(b), as it consists of insignia of the State of Michigan.

Registrations 3348635 and 3992159 Were Obtained Fraudulently

61. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through 60 of the Petition as set forth above, as if fully set forth herein.

62. Registrant obtained the M22 Online Registration and the M-22 Registration fraudulently, in violation of Section 14(3) of the Lanham Act, because, on information and belief, at the time Registrant applied to register the M-22 Sign, Registrant knowingly falsely declared, with the intent to deceive the USPTO, that to the best of Registrant's knowledge and belief no other person, firm, corporation or association had the right to use the mark in commerce, either in identical form 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. Registrant's declaration was knowingly false, because Registrant knew of Petitioner's prior rights in the M-22 Sign, knew of Petitioner's prior and extensive use of the M-22 Sign, and knew the extent to which the M-22 Sign pointed to the State of Michigan. Furthermore, considering the M-22 Sign's significance in the State of Michigan, and that the M-22 Sign points unmistakably to Petitioner, Registrant knew, or at least had no reasonable basis for believing otherwise, that its use of the M-22 Sign would create a likelihood of confusion as to the source of the associated goods and services. In failing to disclose these facts to the USPTO, Registrant intended to procure a registration to which it was not entitled.

Registration 3348635 Was Obtained Fraudulently

63. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through 62 of the Petition as set forth above, as if fully set forth herein.

64. Registrant filed an application with the USPTO to register the mark M



22 M22ONLINE.COM for use with "apparel specifically hats, t-shirts, long sleeve shirts, sweat shirts, pants, shorts, underwear, tank tops." This application was assigned Serial No. 78963038.

65. In the application, Registrant declared under oath, being warned that willful false statements, and the like, may jeopardize the validity of the application,

that the date of first use in commerce of the mark which is the subject of application Serial No. 78963038, in connection with all the goods identified in the application, was at least as early as January 1, 2004.

66. Upon information and belief, Registrant was not using the mark M 22



M22ONLINE.COM on all the goods identified in application Serial No. 78963038 when it filed the application, and upon information and belief, is not currently using the mark on all the goods identified in the application.

67. Upon information and belief, such declaration was made in bad faith and in an attempt to perpetuate a fraud upon the USPTO, because Registrant knew or should have known that it was not using the mark in connection with all the goods identified in application Serial No. 78963038 when it filed the application and made the declaration.

68. Reasonably relying on the truth of such materially false statement, the USPTO approved application Serial No. 78963038 for registration, resulting in Registration No. 3348635 issuing on December 4, 2007.

Priority and Likelihood of Confusion - §2(d)
Registration 3992159

69. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through 68 of the Petition as set forth above, as if fully set forth herein.

70. Petitioner has used the M-22 Sign continuously in interstate commerce for nearly a century, in association with providing traffic management services, providing road and traffic information, and facilitating the safe and efficient travel of travelers within its borders.

71. Petitioner's use of the M-22 Sign pre-dates the application dates of the M22 Online Registration and M-22 Registration and pre-dates the first use dates of the M-22 Sign by Registrant and its predecessor-in-interest.

72. Through Petitioner's use of the M-22 Sign, the public has come to recognize the sign as signifying Petitioner, its services, and specific geographic areas within Michigan.

73. Through Petitioner's use of the M-22 Sign, Petitioner has built up extensive and valuable goodwill in the M-22 Sign.

74. The M-22 Sign in the M22 Online Registration and M-22 Registration is identical to the M-22 Sign used by Petitioner.

75. The M-22 Sign in the M22 Online Registration and M-22 Registration is confusingly similar to the M-22 Sign used by Petitioner, and Registrant's use and registration of the M-22 Sign is likely to cause confusion, deception, and mistake as to the origin of Registrant's products and to confuse, mislead and deceive members of the public into believing that Registrant's goods originate from, or are sponsored, approved or licensed by Petitioner, or are in some way connected to Petitioner.

**Geographically Descriptive
Registration 3992159**

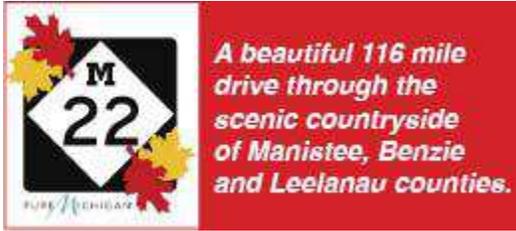
76. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through 75 of the Petition as set forth above, as if fully set forth herein.

77. The M-22 Sign facilitates the safe and efficient flow of traffic within that portion of Northern Michigan where highway M-22 is located.

78. M-22 is a state trunkline highway in the State of Michigan. It runs along the Lake Michigan shoreline of the Leelanau Peninsula. M-22 Sign has existed since 1919.

79. M-22 and “M-22 Corridor” are generally used to refer to a particular geographic region within the State of Michigan, namely the Northwest Michigan corridor.





80. The M-22 region of Michigan, identified by the M-22 Sign, is highlighted in the following:



81. Real estate listings in the M-22 corridor are referred to as “M-22 properties” and “M-22 real estate” to identify and promote their desirable location.

82. www.m22colortour.com is a M22 Color Tour website that promotes the geographic area, instructing visitors to “Travel along M-22 to see for yourself why it was voted as The Most Beautiful Place in America” on Good Morning America.

83. The primary significance of the M-22 Sign is the generally known region of Northern Michigan, the location of Petitioner's M-22 highway.

84. When used on or in association with the goods and services provided by Registrant, the M-22 Sign is seen by consumers as a symbol of the region serviced by the M-22 highway and the amenities that region offers.

85. On information and belief, Registrant's goods and services originate in the Northern Michigan region, the place identified in the M-22 Sign. Registrant's offices and retail shop are located within the M-22 region of Michigan.

86. Purchasers associate the M-22 Sign with Northern Michigan and the M-22 region. Likewise, Purchasers are likely to believe that the Registrant's goods and services originate in the M-22 region of Northern Michigan, the location of Petitioner's M-22 highway.

87. When used on or in connection with Registrant's goods, the M-22 Sign is primarily merely geographically descriptive of them.

88. Registrant adopted the M-22 Sign because of its geographic association with Petitioner and the northern part of the state.

89. Registrant has adopted and used the M-22 Sign because of the geographic location it represents and for all that individuals associate with the sign, Petitioner's highway, and Petitioner.

90. Registrant chose to use the M-22 Sign because of the sign's association with the northern part of the State of Michigan and the "natural beauty, good times, and positive energy" there.¹⁰

91. Registrant's predecessor, Broneah, Inc., was formed by its owners to "express a common passion for Northern Michigan." [Emphasis added].¹¹

92. The experience and culture surrounding Petitioner's highway give the M-22 Sign its significance and create the impression that consumers associate with the M-22 Sign.

93. Travelers to and within the State of Michigan associate the M-22 Sign with the State of Michigan.

94. Travelers to and within the State of Michigan associate the M-22 Sign with Northern Michigan.

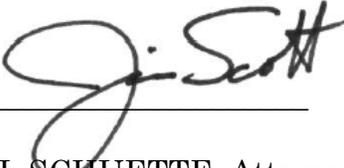
95. Registrant promotes and uses the registered M-22 Sign as an embodiment of all that Petitioner offers to travelers within the Northern part of its boundaries and the area serviced by the M-22 highway.

96. The M-22 Sign has not acquired secondary meaning.

¹⁰ *Id.*

¹¹ *Id.*

For the reasons stated above, Petitioner respectfully requests that Registrations Nos. 3,348,635 and 3,992,159 be cancelled.

By  _____

Date: June 30, 2014

BILL SCHUETTE, Attorney General
James D. Gallagher, Assistant Attorney General
James L. Scott, Special Assistant Attorney General
State Operations Division
525 W. Ottawa
Second Floor
Lansing, MI 48933-1067
Tel: (517) 373-1162
Fax: (517) 373-2060

CERTIFICATE OF SERVICE

I certify that Petitioner's Second Amended Consolidated Petition to Cancel is being served upon John Di Giacomo, counsel for Registrant, via email at john@revisionlegal.com, as the parties have agreed, on June 30, 2014.