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

Proceeding	92058315
Party	Plaintiff State of Michigan
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Attachments	Brief in Opposition.pdf(83102 bytes )

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

State of Michigan

Petitioner,

v.

M22, LLC,

Registrant

Petitioner's Opposition to  
Registrant's Second Partial  
Motion to Dismiss

Reg. Nos.:           3992159  
                              3348635

Proceeding:         92058315

Petitioner State of Michigan opposes Registrant M22, LLC's second partial motion to dismiss its Petition to Cancel in part. The State of Michigan's Petition to Cancel speaks for itself and properly states each claim for cancelling Registrant's registered marks. Registrant's motion should therefore be denied.

In its Brief, Registrant seeks to argue the facts alleged and merits of properly-stated claims. A motion to dismiss for failure to state a claim, however, is a test solely of the legal sufficiency of the complaint.

To withstand a motion to dismiss for failure to state a claim in a Board proceeding, a petitioner need only allege facts that, *if proved*, would establish that a valid ground exists for canceling registrant's registrations. The pleading must be examined in its entirety, construing the allegations therein liberally, as required by Fed. R. Civ. P. 8(f), to determine whether it contains any allegations which, if proved, would entitle Petitioner to the relief sought. *See Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); *Kelly Services Inc. v. Greene's Temporaries Inc.*, 25 USPQ2d 1460 (TTAB 1992); and TBMP 503.02 (2d ed. rev. 2004).

For purposes of determining the motion, all of the State of Michigan's well-pleaded allegations must be accepted as true, and the pleading must be construed in the light most favorable to the State. See *Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc.*, 988 F.2d 1157, 26 USPQ2d 1038 (Fed. Cir. 1993); *Stanspec Co. v. American Chain & Cable Company, Inc.*, 531 F.2d 563, 189 USPQ 420 (CCPA 1976). Additionally, under the simplified notice pleading rules of the Federal Rules of Civil Procedure, the allegations of a complaint should be "construed so as to do justice." Fed. R. Civ. P. 8(e); *Scotch Whisky Ass'n v. United States Distilled Products Co.*, 952 F.2d 1317, 1319, 21 USPQ2d 1145, 1147 (Fed. Cir. 1991).

Registrant's brief again confuses the ability of a party to establish or prove certain facts, with the obligation to allege those facts which, if taken as true, will establish the basis for cancellation.

The State of Michigan's Petition to Cancel alleges facts that, if proved, would establish valid grounds for canceling registrant's registrations.

By 

Date: August 7, 2014

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## CERTIFICATE OF SERVICE

I certify that Petitioner's Opposition to Registrant's Partial Motion to Dismiss is being served upon John Di Giacomo, counsel for Registrant, via email at [john@revisionlegal.com](mailto:john@revisionlegal.com), as the parties have agreed, on August 7, 2014



A handwritten signature in black ink, appearing to read "J. Scott", is written above a horizontal line. The signature is cursive and stylized.

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