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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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**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 Partial Motion to Dismiss  Petitioner’s Submission of Amended Petition for Cancellation Pursuant to Rule 15  Reg. Nos.:                    3992159 3348635  Proceeding:                    92058315
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Petitioner State of Michigan opposes Registrant M22, LLC’s partial motion to dismiss its Petition to Cancel in part. The State of Michigan has standing, and its Petition to Cancel properly states a claim for cancelling Registrant’s registered marks. Registrant’s motion should therefore be denied.

**Standard**

A motion to dismiss for failure to state a claim upon which relief can be granted 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 such facts as would, if proved, establish that (1) it has standing, and (2) 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 motion 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.

### **Standing**

When determining the sufficiency of a petitioner's pleading of standing, the Board must decide whether the petition for cancellation alleges sufficient facts to show petitioner has a real interest in the outcome of the proceeding. See *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); and *Jewelers Vigilance Committee, Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987) (in pleading stage of proceeding plaintiff must plead facts sufficient to show a real interest in proceedings).

By the Petition to Cancel, the State of Michigan has alleged its use of the M-22 Sign in interstate commerce in association with its roads and associated services

for over 93 years. In that time, the State has developed valuable good will in the M-22 Sign, which symbolizes and represents a significant portion of its tourism industry. As alleged, the M-22 highway is an integral part of the Grand Traverse Bay area and Northern Michigan region, which is home to some of the most popular destinations for recreation, leisure, and relaxation in Michigan. The M-22 Sign embodies and signifies the source of these popular tourist destinations that Michigan maintains and has to offer. Further, the State has used the M-22 Sign in its "Pure Michigan" video advertisement campaign, which is broadcast throughout the United States.<sup>1</sup> Through the State's commercial use, and through the M-22 Sign's regulation as a traffic control device, the State has a proprietary interest in the M-22 Sign and a very real personal interest in whether a third party may claim the exclusive right to use that sign as a mark. The continued registration of the M-22 Sign to Registrants, and the associated presumption of exclusive right to use, damages the State of Michigan and presents a means for restricting the State's use of the M-22 Sign. Private citizens should not be able to enjoin the State from using its own traffic control device in any fashion.

The State of Michigan also has standing based on the Attorney General's authority under the *parens patriae* doctrine as recognized by the Michigan Supreme Court. In the Michigan Supreme Court case of *In Re Certified Question*, 638 N.W.2d 409, 413 (Mich. 2002), the Court found that the Michigan Attorney General's "most basic purpose" is to litigate "matters on behalf of the people of the

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<sup>1</sup> See Fall Color on M-22 Michigan's Most Scenic Highway Ad Campaign by Pure Michigan, available at <http://www.youtube.com/watch?v=QreJo5P6-VY>.

state" under Mich. Comp. Law § 14.28. Here, the State of Michigan, which independently developed and created the M-22 sign, purposefully placed it into the public domain, and specifically prohibited the M-22 sign from being “protected by a patent, trademark, or copyright.” *See* Manual on Uniform Traffic Control Devices 2009, pg. I-1. The continued registration of the M-22 Sign to Registrants, and the associated presumption of exclusive right to use, damages the State of Michigan by preventing other Michigan businesses from utilizing the M-22 Sign to promote their own goods and services, and to promote the region that the M-22 Sign embodies. In fact, Registrant has aggressively sought to enforce the mark against other small Michigan businesses that have utilized similar marks on retail items. The Attorney General has an obligation to protect the rights of Michigan’s citizens, and to enforce its laws, which is the reason that under Michigan law he is notified whenever – as here – the validity of one of the State’s rules or regulations has been called into question. *See* Mich. Ct. Rule 2.209(D) (“When the validity of a Michigan statute or a rule or regulation included in the Michigan Administrative Code is in question in an action to which the state or an officer or agency of the state is not a party, the court may require that notice be given to the Attorney General, specifying the pertinent statute, rule, or regulation.”). By claiming exclusive use of the M-22 Sign, registrant is in direct conflict with Michigan law, which is adversely affecting the State of Michigan, as well as the rights of the people of the State.

Cases brought under Trademark Action Section 2(a) or 2(e) do not require ownership of a trademark registration. A property interest is not an element for standing to cancel a registration under Sections 2(a) and 2(e) of the Trademark Act.

*See Corporacion Habanos, S.A. & Empresa Cubana del Tabaco, d.b.a. Cubatabaco v. Juan E. Rodriguez, Cancellation No. 92052146 (T.T.A.B. Aug. 1, 2011)*

(precedential). But even considering this, the State of Michigan's prior use of the M-22 Sign at least establishes a proprietary interest in the M-22 Sign such that Registrant's continued registration of the M-22 Sign damages the State. Further, Registrant's continued registration of the M-22 Sign damages the rights of the people of the State of Michigan, for which the Attorney General has an obligation to defend.

### **Valid Grounds for Cancellation**

The State of Michigan's Petition to Cancel alleges facts that, if proved, would establish valid grounds for canceling registrant's registrations. Nevertheless, to address the concerns raised by Registrant, the State of Michigan hereby submits its First Amended Petition to Cancel. The State of Michigan respectfully requests that the Board accept the Amended Petition for Cancellation in attached Exhibit A.

By 

Date: January 13, 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@newburglaw.com](mailto:john@newburglaw.com), as the parties have agreed, on January 13, 2014.

  
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# **EXHIBIT A**

**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.	)	
_____	)	

FIRST 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 3348635 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:

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 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.

3. 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.

4. 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.

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

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

7. 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.

8. 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.

9. 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.<sup>1</sup>

10. 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.

11. 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.

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

12. 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).<sup>2</sup> See 23 CFR 655.603.

13. 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.]<sup>3</sup>

14. 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).

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<sup>2</sup> 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.”

15. 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,<sup>4</sup> that conforms with the federal MUTCD. See MCL 257.608.<sup>5</sup>

16. 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.<sup>6</sup> 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.

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

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

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<sup>4</sup> 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).

<sup>5</sup> The federal MUTCD is available at <[http://mutcd.fhwa.dot.gov/kno\\_2009.htm](http://mutcd.fhwa.dot.gov/kno_2009.htm)> (accessed September 17, 2013).

<sup>6</sup> MDOT’s version of the MUTCD is available at <<http://mdotcf.state.mi.us/public/tands/plans.cfm>> (accessed September 17, 2013).

19. 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.

20. 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.

21. 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.

22. 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 Northern Michigan region, which is home to some of the most popular destinations for recreation, leisure, and relaxation that Petitioner has to offer.

23. 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 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.

24. 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[.]"<sup>7</sup>

25. 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.

26. Registrant acknowledges that "M-22 is not just a road; it is a way of life."<sup>8</sup>

27. 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 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.

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<sup>7</sup> 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).

<sup>8</sup> *Id.*

28. 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 . . .” Likewise, the M-22 Sign has long been, and continues to be, unmistakably associated with Petitioner and Northern Michigan.

29. Registrant 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.”<sup>9</sup>

30. The M-22 Sign’s function is to tell travelers where on Petitioner’s highway system they are located.

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

32. 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.

33. 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 that imparts information, conveys an informational message, or provides ornamentation.

34. When used on or in association with the goods and services provided by Registrant, the M-22 Sign is not seen by consumers as a source identifier.

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<sup>9</sup> *Id.*

35. When consumers see the M-22 Sign, they associate it with Petitioner's state highway sign and its location within Northern Michigan.

36. Consumers who view the M-22 Sign on or in association with goods and services provided by Registrant do not see the M-22 Sign as a source indicator, but instead as ornamentation consisting of Petitioner's state highway sign.

37. When used on or in association with the goods and services provided by Registrant, the M-22 Sign is functional in nature and consists of matter that, as a whole, is functional, as it not seen by consumers as a source identifier.

38. The M-22 Sign fails to function as a mark, is not perceived by consumers as a mark, is not capable of functioning as a trademark, service mark, or trade name, is not perceived by consumers as a source indicator, and when used on or in connection with Registrant's goods and services, the M-22 Sign is perceived by consumers as purely ornamental.

39. Individuals across Michigan adorn their cars with the M-22 Sign because of its significance as indicating Petitioner and the Northern Michigan region.

40. Registrant's use of Petitioner's M-22 Sign falsely suggests a connection with Petitioner under Trademark Act section 2(a).

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

42. The M-22 Sign is recognized as Petitioner’s highway route marker sign, is associated with the region generally and the amenities it offers, and points uniquely and unmistakably to the State of Michigan.

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

44. 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.

45. Registrant chose to use 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.

46. 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.<sup>10</sup>

47. Registrant’s predecessor, Broneah, Inc., was formed by its owners to “express a common passion for Northern Michigan.” [Emphasis added].<sup>11</sup>

48. 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.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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

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

51. 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.

52. Registrant has copied all aspects of Petitioner's M-22 Sign and has deliberately used the M-22 Sign on goods, namely souvenirs, to associate Petitioner with the source of the goods and services, when Petitioner is not the source of the goods and services provided by Petitioner. 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.

53. 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.

54. 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.

55. The M-22 Sign is an insignia of the State of Michigan.
56. 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.
57. The primary significance of the M-22 Sign is the generally known region of Northern Michigan, the location of Petitioner's M-22 highway.
58. On information and belief, Registrant's goods and services originate in the Northern Michigan, the place identified in the M-22 Sign.
59. Purchasers are likely to believe that the Registrant's goods and services originate in Northern Michigan, the location of Petitioner's M-22 highway.
60. The M-22 Sign is primarily merely geographically descriptive.
61. When used on or in connection with Registrant's goods, the M-22 Sign is merely descriptive of them.
62. The M-22 Sign has not acquired secondary meaning.
63. When used on or in connection with Registrant's goods, the M-22 Sign is primarily merely geographically descriptive of them.
64. 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.

65. The Michigan route marker design is not subject to copyright protection because it is in the public domain.

66. Registrant's registration of the M-22 Sign and claim to exclusive rights in the M-22 Sign improperly circumvents copyright law.

67. 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”).

68. As stated above, the MUTCD provides that the M-22 Sign is in the public domain and not subject to trademark *nor copyright* 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.]<sup>12</sup>

69. Registrant cannot protect the M-22 Sign under copyright law because it took no part in creating it. Registrant has commandeered the design and seeks to usurp copyright law by obtaining trademark protection over a design that is in the public domain.

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

By 

Date: January 13, 2014

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<sup>12</sup> This provision has been part of the Michigan MUTCD since 2005, two years before Registrant's alleged first use in commerce of the M-22 Sign.

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**CERTIFICATE OF SERVICE**

I certify that Petitioner's First Amended Consolidated Petition to Cancel is being served upon John Di Giacomo, counsel for Registrant, via email at [john@newburglaw.com](mailto:john@newburglaw.com), as the parties have agreed, on January 13, 2014.

  
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