

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

PAUL WARNER and)	
BROTHERS OF THE WHEEL M.C.,)	
EXECUTIVE COUNCIL, INC.)	Cancellation No.: 92059164
Petitioner,)	
)	
v.)	Mark: BROTHERS OF THE WHEEL
)	
GERALD R. MOLLOHAN and)	Registration No.: 4299480
BROTHERS OF THE WHEEL)	Date Registered: March 05, 2013
Registrant/Respondent)	

ANSWER TO PETITION TO CANCEL

COMES NOW Registrant and Respondent Gerald R. Mollohan, Pro Se et al owner of Trademark Registration Number 4299480 for “BROTHERS OF THE WHEEL” Classification 026 EMBROIDERED PATCHES to hereby notify the Board (TTAB) of the following Answers to the Petition to Cancel filed in this proceeding. Registrant and Respondent denies to have complete knowledge and information sufficient to form a total belief as to the complete truth of all the allegations of paragraphs A, B, C, D, E, F, G and I of the Petition to Cancel, However he will offer accurate answers as best he knows at this time and will plan to provide additional responses, exhibits, evidence and other necessary documents during the discovery phase as needed to dispute this cancellation filed by Mr. Warner. The petitioner abandoned his trademark and this matter should be denied immediately.

Plaintiff and Petitioner PAUL D. WARNER (President), RAY EDWIN CAREY (Vice President) and/of the BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC. are named defendants regarding Civil Action 2:14-cv-15592 filed 04/30/14 in The U.S. District

Court For The Southern District of West Virginia at Charleston and defending the following counts; “NAKED LICENSING” and “TRADEMARK CANCELLATION”. Plaintiff in Civil Action 2:14-cv-15592, Frank J. Visconi has filed a Motion for Default Judgment in that matter. Paul Warner and his “executive council” have abandoned trademark number 2926222 per the complaint filed by Mr. Visconi. Reason is the “Naked Licensing Doctrine.” This Court should agree and deny this petition to cancel.

Plaintiff and Petitioner PAUL D. WARNER and BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC. and mark number 2926222 have two (2) pending cancellations of their mark number 2926222 at TTAB, Number 92056674 and Number 92059292.

Plaintiff and Petitioner PAUL D. WARNER (President), RAY EDWIN CAREY (Vice President) and BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC. are named defendants regarding Civil Action 2:13-cv-32251 filed 12/16/13 in The U.S. District Court For The Southern District of West Virginia at Charleston and defendants are charged with the following counts; “DEFAMATION, LIBEL, SLANDER, FRAUD, TRADEMARK and COPYRIGHT INFRINGEMENT, RICO VIOLATIONS”. Respondent in this matter, Mr. Mollohan is requesting an order for TRADEMARK CANCELLATION of mark number 2926222. Registrant and Respondent Gerald R. Mollohan have filed a motion for default judgment in that matter. Petitioner in this matter has abandoned the trademark number 2926222.

A. Registrant and Respondent was an active member, an appointed branch chapter officer and dues paying member of the Plaintiffs’ for many years. Registrant and Respondent Gerald R. Mollohan retired from the plaintiff enterprise and mother chapter (a branch chapter) of the plaintiff in good standing and with full entitlement and legal rights to

Plaintiffs' and Petitioners' mark, including complete legal rights to the mark, which has never changed. The petitioner cannot and should not deny that fact. Soon after in the year 2000 Registrant and Respondent Gerald R. Mollohan organized a Motorcycle Club located 2,600 miles away from the Plaintiffs and Petitioners' nearest branch chapter and or operations. Mr. Mollohan at that time named this new club "BROTHERS OF THE WHEEL MOTORCYCLE CLUB NOMADS" and incorporated as a non-profit organization organized under section 501(c)(4) of the Internal Revenue Code and in the State of Washington as a charity organization. It is this Registrant and Respondent's belief that the Plaintiffs' and Petitioners' presented bad faith intentions on numerous occasions on their application for a trademark, as Petitioner Paul Warner knew at the time that his mark was "Naked Licensing" and lacked any kind of Quality Control. Now Petitioner Paul Warner is attempting to steal from the Registrant and Respondents in this Petition for Cancellation. Plaintiff and Petitioner Warner have again committed Fraud in this petition, similarly to when his Vice-President Ray Edwin Carey provided a Fraudulent Affidavit to U.S. District Court Southern District of West Virginia at Charleston in civil action number 2:2011-cv-00104. The Petitioners' has a history of committing fraud and this Respondent will proof that fact with evidence.

Plaintiff's statement in paragraph "A" is mostly without merit.

The plaintiffs and petitioners appear to Registrant and Respondent to be disgruntled past Business associates and are grasping at straws, because of Registrant and Respondents refusal to "play ball with them," respond to Warner's threats and attempted intimidations. The Registrant and Respondents membership have rejected Plaintiffs and Petitioners "conditional" membership and have refused to associate with them. Plaintiffs and Petitioners

require that all members be members of both “AMA” American Motorcycle Association and “COC” Confederation of Clubs to be part of their Outlaw Gang Controlled Enterprise. The plaintiff’s mark will be cancelled due to “Naked Licensing” and “Lack of Quality Control,” either by the Courts or the TTAB or both. The plaintiff’s mark requires permission from other enterprises (OMG – Outlaw Motorcycle Gangs) to be used at anytime and anywhere. That they cannot deny, nor should they. The plaintiff’s mark has no Quality Control.

B. - Deny. Is completely inaccurate and without merit. Registrant and Respondents will provide additional proof, exhibits and evidence during the discovery process. Registrant and Respondent Gerald R. Mollohan paid the plaintiffs thousands of dollars over years for his mark during the period of time of his long membership with the Plaintiff. Those funds were understood by all to make him a member for life, since Mr. Mollohan had plenty of time in the club to retire. That they cannot deny, nor should they

C. - Deny. Is completely inaccurate and without merit. Registrant and Respondent Gerald R. Mollohan will provide proof, exhibits and evidence during the discovery process. Gerald R. Mollohan paid the plaintiff thousands of dollars for his mark. Those funds were understood by all to make him a member for life, since Mr. Mollohan had plenty of time in the club to retire. That they cannot deny, nor should they

D. - Deny. Is completely inaccurate and without merit. Registrant and Respondent Gerald R. Mollohan will provide proof, exhibits and evidence during the discovery process. Gerald R. Mollohan paid the plaintiff thousands of dollars for his mark. Those funds were understood by all to make him a member for life, since Mr. Mollohan had plenty of time in the club to retire. That they cannot deny, nor should they

E. - Deny. Is completely inaccurate and without merit. Gerald R. Mollohan will provide proof, exhibits and evidence during the discovery process. Gerald R. Mollohan paid the plaintiff thousands of dollars for his mark. Those funds were understood by all to make him a member for life, since Mr. Mollohan had plenty of time in the club to retire. That they cannot deny, nor should they

F. - Deny. Is completely inaccurate and without merit. Gerald R/ Mollohan will provide proof, exhibits and evidence during the discovery process. Gerald R. Mollohan paid the plaintiff thousands of dollars for his mark. Those funds were understood by all to make him a member for life, since Mr. Mollohan had plenty of time in the club to retire. That they cannot deny, nor should they

G. - Deny. Is completely inaccurate and without merit. Gerald R. Mollohan will provide proof, exhibits and evidence during the discovery process. Gerald R. Mollohan paid the

plaintiffs thousands of dollars for his mark. Those funds were understood by all to make him a member for life, since Mr. Mollohan had plenty of time in the club to retire. That they cannot deny, nor should they

H. - Deny. Is completely inaccurate, misleading and without merit. Gerald R. Mollohan will provide additional proof, exhibits and evidence during the discovery process. Registrant Gerald R. Mollohan paid the plaintiffs thousands of dollars for his mark. Those funds were understood by all to make him a member for life, since Mr. Mollohan had plenty of time in the club to retire. That they cannot deny, nor should they

I. - Deny. Is completely inaccurate, misleading and without merit. Gerald R. Mollohan will provide additional proof, exhibits and evidence during the discovery process. Registrant Gerald R. Mollohan owns copyrights Registration Number TXu001857219 (Effective Date September 6, 2012) "BROTHERS OF THE WHEEL" and Registration Number TX0007800119 (Effective Date June 30, 2000) "BROTHERS OF THE WHEEL M.C. BY-LAWS". These facts, Gerald R. Mollohan has previously proofed and is in Court records, with other evidence. Registrant and Respondent Gerald R. Mollohan owns all the Intellectual Property that the Plaintiffs have been reproducing, distributing and illegally using related to any embroidered patches, written and artistic materials. Thus petitioners have committed infringements of Registrant Gerald R. Mollohan's federally protected trademarks and copyrights (U.S.C., Title 17).

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Petition to cancel fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The claim set forth in the Petition to cancel is barred in whole or in part by the doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

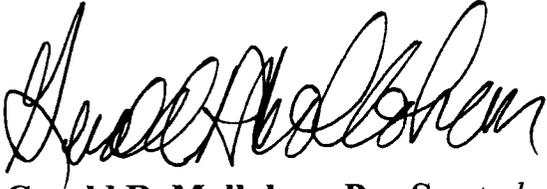
The claim set forth in the Petition to cancel is barred in whole or in part by the doctrine of waiver, acquiescence, and estoppel.

WHEREFORE, Registrant and Respondent Gerald R. Mollohan requests that the Cancellation be denied.

Dated: June 10, 2014

St.Albans, West Virginia

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan". The signature is fluid and cursive, with the first name "Gerald" being the most prominent.

Gerald R. Mollohan, Pro Se et al

REGISTRANT AND RESPONDENT

P.O. Box 507

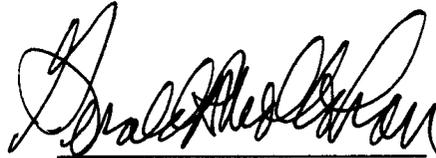
St. Albans, West Virginia 25177-0507

CERTIFICATE OF SERVICE

I, Gerald R. Mollohan hereby certify that on June 10, 2014, a copy of the foregoing

“ANSWER TO PETITION TO CANCEL”

Was sent by U.S. Mail, postage prepaid to:
PAUL D. WARNER and
BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC.
PO BOX 782
MADISON, WEST VIRGINIA 25130-0782
UNITED STATES

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan". The signature is written in a cursive style with a large initial "G".

GERALD R. MOLLOHAN, Pro Se et al
REGISTRANT and RESPONDENT

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

PAUL WARNER and
BROTHERS OF THE WHEEL M.C.
EXECUTIVE COUNCIL, INC.
Petitioner,

Cancellation No. **92059164**

v.

Mark: **BROTHERS OF THE WHEEL**
Registration NO. 4299480
Date of Registration: March 05, 2013

GERALD R. MOLLOHAN and
BROTHERS OF THE WHEEL
Registrant/Respondent

**REGISTRANT/RESPONDENTS' DECLARATION
AND MOTION TO FIND PETITIONERS
IN VIOLATION OF THE LANHAM ACT – NAKED LICENSING LAW**

INTRODUCTION

COMES NOW REGISTRANT AND RESPONDENT' GERALD R. MOLLOHAN, Pro Se, *et al* and WITH EVIDENCE, and hereby request this most honorable Court find the Petitioners' in violation of Section 45 of 15 U.S.C. 1051 the Lanham Act – Abandonment of Trademark. The Lanham Act, section 45 refers to “losing a Trademark under the NAKED LICENSING LAW (or Doctrine). It specifically states that a Trademark licensor (i.e. the owner of Trademark/the Registrant) is required to control the quality of the goods or services offered by a licensee under the trademark. It goes on to state, “If quality is not monitored or enforced, the license may be considered a NAKED LICENSE, the mark may lose its significance and become involuntarily abandoned. In such circumstances, a Trademark licensor’s assertion of an infringement claim

against a third party may risk a counterclaim for cancellation of the mark on the grounds that the license is naked.” Put another way, a NAKED LICENSE of a trademark occurs when the licensor “fails to exercise adequate quality control over the licensee. When a licensor is found to have failed to exercise such control, a Court may find that the Trademark owner has abandoned the Trademark, in which case the owner would be stopped from asserting rights to the trademark.” Thus, it is incumbent upon the Trademark owner to enforce its mark against misuse and if the owner fails to do so, the owner risks being deemed to have abandoned the mark and thus may lose rights to the mark. If that is the case, the Trademark owner no longer has a valid Trademark and it cannot be infringed upon.

It is the intent of Gerald R. Mollohan in this motion to show that the Petitioner’s, 1) do not retain express contractual control over the licensee's quality control measures, and 2) do not have actual control over the licensee's quality control measures thereby allowing Naked Licensing of his Trademark, and therefore unintentionally abandoned all rights of enforcement of the Trademark No. 2926222.

FACTS

1. Petitioner’s U.S. Registration Number: 2926222 Mark: “Brothers of the Wheel M.C.” is currently being reviewed by the Trademark Trial and Appeal Board (TTAB) for cancellation, Cancellation Number 92056674 and Cancellation Number 92059292.
2. As defined by the Courts, “Naked Licensing occurs when a licensor does not exercise adequate quality control over its licensee’s use of a licensed trademark such that the trademark may no longer represent the quality of the product or service the consumer has come to expect”.

3. Others have been allowed “free reign” use of the Plaintiff’s mark without any written agreement or quality control agreement.
4. Any geographical territory agreement is lacking and has always been lacking.
5. There is no quality control whatsoever of the Petitioner’s mark, written or otherwise.
6. Petitioners’ does not have nor has it ever drafted a written licensing agreement per requirements for allowing use of its Trademark.
7. There has never been a licensing agreement produced for examination by this most honorable Court, U.S. District Court, State of West Virginia Kanawha County Circuit Court and or anybody else, leading Registrant and Respondent Gerald R. Mollohan to believe that none exists. As far as that goes, Registrant and Respondent Mollohan being a former active member and officer in the Petitioners Enterprise has never heard of a licensing agreement being used by any of the Petitioners, nor witnessed one or any quality control of Petitioners Mark 2926222.
8. There is absolutely no quality control of the Petitioners’ mark 2926222.
9. Petitioners’ have always made it known that their so called motorcycle club enterprise is non-territorial and that all members, including those of branch chapters prior to displaying the mark anywhere, are required to seek out the local “Outlaw” Motorcycle Gangs (OMG) and “1%” Motorcycle Clubs, for permission to fully obtain permission (from Outlaw, 1%’er’s OMG) to display the mark 2926222, to even exist and to get a “blessing” in order to display Petitioners trademark (“or suffer the consequences”). Further the Petitioners are required by their own by-laws, that each member displaying

petitioners mark, must wear an American Motorcycle Association (AMA) patch (logo) close to and very near the petitioner's mark (logo) and clearly indicating that each and every petitioners member is "AMA" and a sub-member and support member of the local Outlaw Motorcycle Gang (OMG.) Further, the Petitioner's mark (logo) is cluttered with other text on patches also near the mark 2926222. At times all the Plaintiffs are required by OMG's to turn their mark inside out so the mark is not to be seen by anyone or petitioners risk losing the mark to the OMG's members.

10. According to the Petitioner's "by-laws", "Any member who has been active member of the plaintiffs for a period of five (5) years or more shall have the option of retiring and may be permitted to keep his/her colors (mark no. 2926222) in their possession forever". And in addition, to get the mark tattooed on member person (body). This, in and of itself, makes "quality control" of Petitioners Trademark impracticable.
11. Registrant and Respondent Gerald R. Mollohan was an active member and officer of the Petitioners for many years and says that neither a licensing agreement, nor any kind of quality control agreement existed at any time. Further, numerous "club" and "biker" patches are allowed to be placed in the immediate area of the petitioners mark and cause a distraction of the petitioners mark (logo). Numerous other "support" and "gang" patches are generally placed in the same area of the mark and logo, including the mandatory "AMA" patch and that fact is so stated in the Petitioner's By-Laws.
12. Federal Courts that have considered the issue of naked licensing have required licensors to police their licensees or suffer abandonment of their trademarks rights.

13. Petitioners claim to have “branch chapters” and “gang chapters” which are not the same as “franchisees.”

In addition to above related FACTS, Registrant and Respondent calls to the court’s attention “*Freecycle Sunnyvale v. Freecycle Network*, 08-16382, 2010 WL 4749044, 9th Cir., 2010”, a case with similar circumstances and facts that led to cancellation of a Trademark due to Naked Licensing.

Registrant and Respondent further cites Appeals Court decision “289 F.3d 589 (2002), *Barcamerica International USA Trust, a California Trust, Plaintiff-counter-defendant-Appellant v. Tyfield Importers, Inc., a corporation; Cantine Leonardo Da Vinci Soc. Coop., a.r.l., an entity of Italy, Defendant-count-claimants Appellees v. George Gino Barca, Third Party Defendant* (No. 01-15973), U.S. Court of Appeals for the Ninth District (Argued April 10, 2002, Filed May 6, 2002)”. In this case, and the district court's cancellation of Barcamerica's registration we need not consider the district court's alternative holding that Barcamerica's claims are barred by the doctrine of laches.

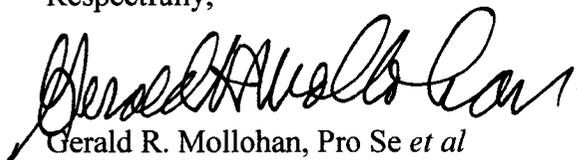
ARGUMENT

The Petitioners’ are in clear violation of Section 45 of 15 U.S.C. 1051 the Lanham Act – Abandonment of Trademark. The Lanham Act, section 45 refers to “losing a Trademark under the NAKED LICENSING LAW (or Doctrine).” The Courts interpret the Lanham Act to require licensors to control their licensees. Courts require licensors to police their licensees in order to satisfy this control.

CONCLUSION

WHEREFOR, Registrant and Respondent Gerald R. Mollohan submits the above facts in support of his motion "TO FIND PLAINTIFFS' IN VIOLATION OF THE LANHAM ACT – NAKED LICENSING LAW" and as evidence of Petitioner's violation of the Naked Licensing Doctrine of the Lanham Act. Further, Petitioner, by virtue of his lack of any licensing agreement and/or quality control over his Trademark has committed involuntary abandonment of his mark thus allowing the TTAB Court to exercise "judicial cancellation" of Petitioner's registered mark.

Respectfully,

A handwritten signature in black ink, appearing to read "Gerald R. Mollohan". The signature is written in a cursive, flowing style.

Gerald R. Mollohan, Pro Se *et al*
Registrant and Respondent

CERTIFICATE OF SERVICE

I, Gerald R. Mollohan hereby certify that on June 10, 2014,
a copy of the foregoing

**“REGISTRANT/RESPONDENTS’ DECLARATION
AND MOTION TO FIND PETITIONERS
IN VIOLATION OF THE LANHAM ACT – NAKED LICENSING LAW”**

Was sent by U.S. Mail, Postage prepaid to:

PAUL D. WARNER and
BROTHERS OF THE WHEEL M.C. EXECUTIVE COUNCIL, INC.
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