

ESTTA Tracking number: **ESTTA720994**

Filing date: **01/17/2016**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

| | | | |
|---------|--|-------------|---------------|
| Name | Michael Broder | | |
| Entity | Individual | Citizenship | UNITED STATES |
| Address | 823 NW 57th Street Fort Lauderdale, FL 33309 UNITED STATES | | |

| | | | |
|----------------------|---|--|--|
| Attorney information | Andrew Gerber Kushnirsky Gerber PLLC 115 West 18th Street 2nd Floor New York, NY 10011 UNITED STATES andrew@kgfirm.com, ilya@kgfirm.com Phone:2128821320 | | |
|----------------------|---|--|--|

Registration Subject to Cancellation

| | | | |
|-----------------|---|-------------------|------------|
| Registration No | 4367084 | Registration date | 07/16/2013 |
| Registrant | Richardson, Greg N-22 Lakewood, CO 80226 UNITED STATES | | |

Goods/Services Subject to Cancellation

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| Class 035. First Use: 2008/05/01 First Use In Commerce: 2011/05/01 All goods and services in the class are cancelled, namely: Organizing, arranging and conducting video game events in the nature of tradeshows for business purposes within the anime, science fiction, comic book, video gaming events and conventions of others across the nation |
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Grounds for Cancellation

| | |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

Mark Cited by Petitioner as Basis for Cancellation

| | | | |
|------------------------------------|---|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | SUPERCON | | |
| Goods/Services | Organization and operation of conventions and trade shows featuring comics, anime, science fiction, fantasy, and video games. | | |

| | |
|-------------|--|
| Attachments | SuperCon Petition to Cancel.pdf(212201 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|---------------|
| Signature | /AG/ |
| Name | Andrew Gerber |
| Date | 01/17/2016 |

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

IN THE MATTER OF
U.S. Trademark Registration No.
4,367,084

| | | |
|------------------------|---|------------------|
| Michael Broder, | : | |
| Petitioner, | : | |
| | : | Cancellation No. |
| v. | : | |
| | : | |
| Greg Richardson, | : | |
| Registrant/Respondent. | : | |

PETITION TO CANCEL

Michael Broder (“Petitioner”) hereby petitions to cancel U.S. Trademark Registration Nos. 4,367,084 (for the mark SUPERCON) on the following grounds:

1. Michael Broder is an individual residing at 823 NW 57th Street, Fort Lauderdale, FL. 33309.
2. According to the records of the USPTO, the current owner of U.S. Trademark Registration No. 4,367,084 is Greg Richardson, an individual residing at 658 South Reed Court, Apt. N-22, Lakewood, CO 80226 (“Respondent”).
3. Petitioner organizes and operates massive comic, anime, science fiction, fantasy, and video game conventions under the SUPERCON and FLORIDA SUPERCON trademarks. Petitioner’s events attract thousands of attendees from across the country and run in parallel with

the ComicCon convention in San Diego. Petitioner's most recent SUPERCON convention drew over 50,000 attendees.

4. Petitioner began using the SUPERCON trademark in connection with these conventions at least as early as May 1, 2006 when he began promoting the first SUPERCON conference to be held in Florida later that year. Petitioner then successfully staged the first SUPERCON Convention on November 3-5, 2006 in Hollywood, Florida.

5. On February 24, 2011, prior counsel for Petitioner filed U.S.P.T.O. Application Serial No. 85,251,172 for FLORIDA SUPERCON in Class 35 for "Organization of business conventions." (the "Petitioner Application"). The Petitioner Application correctly listed a first use in commerce date of May 1, 2006, which was the first date Petitioner began publicly promoting the first SUPERCON event.

6. Petitioner's prior counsel filed a deficient application and failed to timely respond to the resulting office action. The Petitioner Application was deemed abandoned on November 29, 2011.

7. On July 10, 2012, Respondent filed Application Serial No. 85,672,398 for SUPERCON in Class 35 for "Organizing, arranging and conducting video game events in the nature of tradeshow for business purposes within the anime, science fiction, comic book, video gaming events and conventions of others across the nation." (the "Respondent Application").

8. The Respondent Application listed a first use date of May 1, 2011, some five years after Petitioner's first use of the SUPERCON mark for identical goods and services.

9. Petitioner's use of his SUPERCON Mark and the filing of the Petitioner Application both pre-date Respondent's first use of the SUPERCON mark and the filing date for

the Respondent Application. This clearly establishes the priority of Petitioner's SUPERCON mark.

10. Petitioner's SUPERCON mark is symbolic of extensive goodwill established by Petitioner, has acquired a high degree of recognition through continued use and expenditures of time, effort, and money in advertising and promotion, and services as a unique identifier of the goods and services offered by Petitioner.

11. Respondent's SUPERCON mark is identical to Petitioner's SUPERCON mark. The goods and services that are marketed under Petitioner's and Respondent's SUPERCON marks are essentially identical: organizing and operating comic, anime, science fiction, fantasy, and video game conventions.

12. Conference attendees travel across the country to attend such conferences throughout the year. Petitioner and Respondent market their respective conferences through the same channels of trade to the same attendees across the country.

FIRST COUNT
LIKELIHOOD OF CONFUSION

13. Petitioner hereby repeats and realleges each and every allegation set forth in paragraphs 1 through 12 above, and incorporate them herein by this reference.

14. Petitioner's first dates of use of his SUPERCON mark are prior to the date of filing of the Respondent Application and the date of Respondent's claimed date of first use.

15. The Petitioner Application, also filed prior to the date of filing of the Respondent Application and the date of Respondent's claimed date of first use, affirmed Petitioner's first use date of SUPERCON mark. Despite the abandonment of that application, Petitioner has continued to use the SUPERCON mark in commerce and has not abandoned such use of the SUPERCON mark.

16. In light of the identical marks, identical channels of trade, and identical services offered by Petitioner and Respondent, Respondent's SUPERCON mark is likely to cause confusion, mistake, or deceive as to source by improperly suggesting that Respondent's services are associated with, endorsed by, affiliated with, authorized by or sponsored by Petition, when such is not the case. Indeed, Respondent appears to have begun using the SUPERCON mark only after learning of Petitioner's SUPERCON conferences that had been held for five successive years prior.

WHEREFORE, Petitioner requests that the Trademark Trial and Appeal Board grant its petition and cancel U.S. Trademark Registration No. 4,367,084.

January 17, 2016

Respectfully submitted,

/s/ Andrew Gerber
Andrew Gerber
Kushnirsky Gerber PLLC
115 West 18th Street, 2nd Floor
New York, NY 10011
(212) 882-1320
andrew@kgfirm.com
Attorneys for Petitioner

CERTIFICATE OF SERVICE

This is to certify that on this date, a true and correct copy of the foregoing PETITION TO CANCEL is being served, by first class mail, postage prepaid, to the owner of record of U.S. Trademark Registration No. 4,367,084 at the address for the party identified as “Current Owner” in the USPTO TSDR database:

Greg Richardson
658 South Reed Court Apt N-22
Lakewood, CO 80226

With a copy by first class mail, postage prepaid, to the listed Correspondent for U.S. Trademark Registration No. 4,367,084:

CHRISTOPHER DITICO
RAJ ABHYANKER, P.C.
1580 W EL CAMINO REAL STE 8
MOUNTAIN VIEW, CALIFORNIA 94040-2462

January 17, 2016

/s/ Andrew Gerber
Andrew Gerber