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

Proceeding	92063202
Party	Plaintiff Prosper Funding, LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PROSPER FUNDING, LLC, Petitioner, v. PROSPER GROWTH PARTNERS, LLC, Registrant.	Proceeding No.: 92063202 Registration No.: 3,845,780 Mark: PROSPER Registration Date: August 31, 2010 Petitioner’s Ref. No.: 18289/049001
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

FIRST AMENDED PETITION FOR CANCELLATION

Petitioner Prosper Funding LLC (“Petitioner”), a Delaware Limited Liability Company, having an address of 221 Main Street, 3rd Floor, San Francisco, California, 94105, believes that it will be damaged by the continued registration of U.S. Trademark Reg. No. 3,845,780, the mark PROSPER, having a services description of “Investment advisory services; investment management,” in International Class 36, and hereby petitions to cancel the same.

As grounds therefore, Petitioner alleges as follows:

1. On information and belief, Prosper Growth Partners, LLC, a Texas limited liability company, having an address of 10375 Richmond Avenue, Suite 920, Houston, Texas 77042 (“Respondent”), is the owner of U.S. Trademark Reg. No. 3,842,187, claiming a date of first use of September 30, 2008 (“Respondent’s Mark”).

2. Petitioner provides financial services in the field of financial planning and management in the fields of consumer lending services, and facilitating and arranging for the financing of consumer loans and evaluation of credit bureau data and evaluation of the credit worthiness of private individuals, among others.

3. Petitioner is the owner of record for U.S. Trademark Reg. No. 3,374,113 for the mark PROSPER, issued on January 22, 2008 in Class 035, for online website services related to matching borrowers with potential lenders in the field of consumer lending in an auction-type environment via a global computer network. A Section 15 Declaration was accepted by the United States Patent and Trademark Office (“USPTO”) on February 7, 2013.

4. Petitioner is the owner of record for U.S. Trademark Reg. No. 3,274,817, for the mark PROSPER and design, issued on August 7, 2007, for online website services relating to matching borrowers with potential lenders in the field of consumer lending in an auction-type environment via a global computer network. A Section 15 Declaration was accepted by the USPTO on February 11, 2013.

5. Petitioner is the owner of record for U.S. Trademark Reg. No. 3,253,371 for the mark PROSPER and design, issued on June 19, 2007, for telecommunications services, namely electronic transmission of data and messages; online interactive bulletin board and chat room for transmission of messages among users concerning financial matters. A Section 15 Declaration was accepted by the USPTO on February 11, 2013.

6. Petitioner is the owner of record for U.S. Trademark Reg. No. 3,277,812 for the mark PROSPER, issued on August 7, 2007, for telecommunications services, namely electronic transmission of data and messages; online interactive bulletin board and chat room for transmission of messages among users concerning financial matters. A Section 15 Declaration was accepted by the USPTO on February 7, 2013.

7. Petitioner is the owner of record of U.S. Trademark Reg. No. 4,887,696 for PROSPER PREMIER, issued on January 19, 2016, and claiming a date of first use of May 22, 2012, for online website services providing a platform for borrowers and investors in the field of consumer lending via a global computer network in International Class 035; online website that provides information pertaining to financial planning and management in the fields of consumer lending services; facilitating and arranging for the financing of consumer loans and evaluation of credit bureau data and evaluation of the credit worthiness of companies and private individuals in International Class 036; and telecommunications services, namely electronic transmission of data and messages in International Class 038.

8. Petitioner is the owner of record of U.S. Trademark Application No. 86/413,833 for PROSPER.COM, filed on October 3, 2014, for online website services providing a platform for borrowers and investors in the field of consumer lending via a global computer network in International Class 035; online website that provides information pertaining to financial planning and management in the fields of consumer lending services; facilitating and arranging for the financing of consumer loans and evaluation of credit bureau data and evaluation of the credit worthiness of companies and private individuals in International

Class 036; and telecommunications services, namely electronic transmission of data and messages in International Class 038.

9. Petitioner is the owner of record of U.S. Trademark Application No. 86/413,839 for PROSPER, filed on October 3, 2014, and claiming a date of first use of February 5, 2006, for online website that provides information pertaining to financial planning and management in the fields of consumer lending services; facilitating and arranging for the financing of consumer loans and evaluation of credit bureau data and evaluation of the credit worthiness of companies and private individuals in International Class 036.

10. Petitioner's registered trademarks and pending applications, as described in paragraphs 2-9 above ("Petitioner's Marks"), are symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. Petitioner has been in the financial industry since at least as early as 2006. Petitioner is America's first peer-to-peer lending marketplace, with more than two million members and over \$1,000,000,000 in funded loans. Petitioner also handles the servicing of loans on behalf of the matched borrowers and investors. Petitioner's dates of first use in commerce for its PROSPER marks are well prior to the date of first use alleged in Respondent's registration. Petitioner's rights are, therefore, paramount and superior to Respondent's. Petitioner and Respondent are not connected or affiliated in any way.

11. A likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) exists between Respondent's Mark and Petitioner's Marks because the dominant feature of

the respective marks, "PROSPER," is identical. Petitioner alleges that the services Respondent is currently offering constitute services substantially related to Petitioner's services through the same or similar channels of trade. Consumers familiar with Petitioner's Marks and services are likely to believe Respondent's services to originate from, be endorsed by, or otherwise sponsored by Petitioner. Respondent's Mark, therefore, creates a confusingly similar commercial impression with Petitioner's Marks.

12. Respondent's Mark so resembles Petitioner's Marks as to be likely to create a false designation of origin and false or misleading representation of fact that is likely to cause confusion, or to cause mistake, or to deceive as to an affiliation, connection, or association between Petitioner and Respondent. Any objection or fault with the goods and services offered in connection with Respondent's mark may reflect upon and seriously injure Petitioner's reputation in connection with the goods and services offered in connection with Petitioner's Marks.

13. On information and belief, Respondent has not used Respondent's Mark for at least three consecutive years, has no intent to resume use of Respondent's Mark, and has abandoned the same.

14. In view of the foregoing, Petitioner is entitled to request cancellation of Respondent's Mark.

WHEREFORE, Petitioner respectfully requests that its First Amended Petition for Cancellation be sustained and that U.S. Trademark Registration No. 3,845780 be canceled.

Dated: April 12, 2016

Respectfully submitted,

OSHA LIANG, LLP

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