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

Proceeding	92063552
Party	Defendant LeMar X. Lewis
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Attachments	2016_07_25_14_41_20.pdf(408173 bytes)

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

LeMar Lewis

Respondent

Mark THORO (stylized)

Registration No. 3,206,498

Cancelation No. 92063552

v.

LeMans Corporation

Petitioner

Respondent's Response to Amended Petition to Cancel

1. For over (30) years, Petitioner and its predecessor-in-interest, have been engaged in offering clothing, parts, and accessories in the motorcycle industry.

Response - Respondent Disagrees

2. Petitioner, with its predecessor-in-interest, has continuously used the mark THOR in commerce throughout the United States since at least as early as September 1, 1988 in connection with motorcycle riding apparel and casual apparel. Petitioner uses its THOR mark on, and in connection with, a broad range of motorcycle riding apparel, casual apparel, gear bags and other cases and wallets, and sporting equipment among other related goods and services.

- Response - Respondent/Owner disagrees with this statement:

3. Based on its extensive and long-time use of the mark THOR internationally and in the United States, Petitioner filed and obtained a number of trademark registrations (hereinafter collectively referred to as the "THOR Registrations"), including but not limited to:

Mark	Reg. No.	Reg. Date	Use in Commerce	Coverage
THOR	1,755,416	3-2-1993	9-0-1988	motorcycle racing apparel; namely, racing pants, jerseys, boots, T shirts, sweatshirts, caps and jackets
THOR	2,842,916	5-18-2004	9-0-1988	Gear bags, namely athletic bags, tool bags sold empty, athletic bags for general use, travel bags, backpacks, briefcases, and wallets
THOR	2,829,892	4-6-2004	9-0-1988	Athletic equipment for use in motocross racing namely, chest guards, back guards, elbow guards, forearm guards, shoulder guards, kidney guards, knee guards, shin guards, motocross gloves, and neck guards
THOR	2,829,888	4-6-2004	9-0-1988	Protective clothing for motocross [sic] racing namely chest protectors, back protectors, elbow protectors, forearm protectors, shoulder protectors, kidney protectors, knee protectors, shin protectors, protective hand gear, protective helmets, protective boots, neck protectors and safety goggles; helmet bags
THOR	3,191,730	1-2-2007	3-30-2002	On-line catalogue services for dealers and distributors featuring motocross racing and motorcycle

				riding gear, sportswear, and accessories; on-line marketing services for dealers and distributors featuring motocross racing and motorcycle riding gear, sportswear and accessories
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The THOR Registrations are presently valid and subsisting and incontestable and are *prima facie* evidence of Petitioner's ownership and exclusive right to use the THOR mark in commerce in connection with the goods and services specified in the registrations. Copies of the details of these registrations from the U.S. Patent and Trademark Office database, showing current status and title of the registration, are attached as Exhibit A.

- Response - Respondent/Owner disagrees with this statement.

4. Petitioner's use of its THOR mark on its goods and services began well before Respondent's claimed first use of its THORO (Stylized) mark in connection with Respondent's Goods. **-Response - Respondent/Owner disagrees with this statement.**

5. Since first beginning use of the THOR mark, Petitioner has expended substantial monies and effort in marketing, advertising and promoting its THOR mark in connection with its goods and services throughout the United States. **-Response - Respondent/Owner disagrees with this statement.**

6. Since first beginning use of the THOR mark, Petitioner has generated substantial sales of its goods and services connected to the THOR mark.

- Response - Respondent/Owner disagrees with this statement.

7. By reason of the substantial and continuous nationwide use, extensive marketing, publicity, advertising and promotion of its goods in connection with the THOR mark, combined with the high quality of those goods, Petitioner's THOR mark has become well recognized and highly regarded in the marketplace, and represents invaluable goodwill associated exclusively with Petitioner. **- Response - Respondent/Owner disagrees with this statement.**

8. Respondent's THORO (Stylized) mark is confusingly similar to Petitioner's THOR mark in appearance sound, connotation and commercial impression. Respondent's THORO (Stylized) mark is allegedly used for goods which are identical, and/or related to the goods in connection with which Petitioner has used and registered its "THOR" mark, and Respondent's Goods, unlimited in the Respondent's registration as to end users and channels of trade, therefore are presumed to be sold to all classes of customers through all potential channels of trade, including those used by Petitioner. - See document "B" Attachment →

9. Petitioner is not connected in any way with the Respondent or the use by Respondent of the alleged mark THORO (Stylized). - Respondent Agrees with this statement

10. On information and belief, Respondent's adoption of and filing of the trademark application for the THORO (stylized) mark has been made with actual knowledge, as well as constructive knowledge, of Petitioner's use and registration of the THOR mark in connection with Petitioner's goods and services. - See document "B" attachment

11. The THORO (Stylized) mark that is the subject of Registration No. 3,206,498 so resembles Petitioner's THOR mark as to be likely, when used in connection with Respondent's Goods, to create an association or deception with Petitioner as the source of such goods, or to indicate that Respondent's Goods are otherwise, endorsed, sponsored, or approved by Petitioner, whereby Petitioner will be damaged by the continued registration of the Respondent's THORO (Stylized) mark. Furthermore, any defect, objection or fault found with Respondent's goods offered and sold under the THORO (Stylized) mark would be likely to reflect upon and seriously injure the reputation that Petitioner has established for its goods under the THOR mark.

- See Document "B" Attachment →

12. Petitioner's THOR mark is of sufficient notoriety and has a sufficient reputation among consumers such that use of Respondent's highly similar THORO (Stylized) mark for
Response - Respondent/Owner disagrees with this statement.

Respondent's Goods will cause consumers to presume a connection and/or affinity with Petitioner. **Response - Respondent/Owner disagrees with this statement.**

13. On information and belief, Respondent's use of the THORO (Stylized) will falsely suggest a connection and/or affinity with Petitioner in violation of Section 2(a) of the Trademark Act of 1946, 15 U.S.C. § 1052(a). **Response - Respondent/Owner disagrees with this statement**

14. By Respondent's admission, Respondent's mark was not in use in commerce for each of the goods recited in Respondent's Goods as of the filing date of Respondent's application Serial No. 76/485,312 on January 27, 20003 nor at the time of filing of Respondent's Declaration of Use (October 21, 2012) for Registration No. 3,206,498. *See document "B" Attachment* →

15. Since there was no use of Respondent's THORO (Stylized) mark at the time he filed Application Serial No. 76/485,312 it was void ab initio. **Response - Respondent/Owner disagrees with this statement**

16. Since there was no use of Respondent's THORO (Stylized) mark at the time he filed the October 21, 2012 Declaration of Use for Registration No. 3,206,498, the Declaration was false, making the filing statutorily defective and void, and therefore Respondent effectively abandoned the registration as of that date. *-See document "B" Attachment* →

17. On information and belief, Respondent's THORO (Stylized) mark is not in use in the ordinary course of trade as of the filing date of this Amended Petition to Cancel nor was it in use in the ordinary course of trade at the time of filing of the original Petition to Cancel. **Response - Respondent/Owner disagrees with this statement.**

18. On information and belief, the Respondent has not made bona fide use of the THORO (Stylized) mark in commerce in the ordinary course of trade for more than three consecutive years and therefore has abandoned the mark.

Response - Respondent/Owner disagrees with this statement.

19. Based on Respondent's admission of no use of the THORO (Stylized) mark at the time Respondent signed and filed his Declaration of Use on October 21, 2012, on information and

belief, Respondent made a false representation to the USPTO about the use in commerce, which representation was material to the continued registrability of the mark, where Respondent had knowledge of the falsity of the representation and where Respondent clearly made the representation with the intent to deceive the USPTO for purposes of maintaining the registration.

— *See Document 'B' Attachment* →

20. The registration for Respondent's THORO (Stylized) mark is void, the THORO (Stylized) mark has been abandoned by Respondent and the registration is inconsistent with Petitioner's rights under its aforementioned registrations and the common law, and is damaging to Petitioner as explained in this Amended Petition.

WHEREFORE, Petitioner requests that this cancellation be sustained and that Registration No. 3,206,498 be cancelled.

Response - Respondent/Owner disagrees with this statement.

(Document B)

Respondents/Owners Continued Response to Petition to Cancel mark Thoro (Stylized)

Cancelation No. 92063552

Response #'s #8,10,11,14,15,16,19

8. Respondent Disagrees

Respondents feels registered "Thoro" styled mark is in no way confusingly similar to Petitioners "Thor" mark in name, sound or appearance. No evidence or instances of confusion has occurred between the two marks to date. Petitioner we feel is overstating and enforcing its own marks right in an unreasonable and unfair manner. "Thoro' is derived from 'Thoroughbred" as in race horse primarily for premium sportswear and apparel. Petitioner's' Thor"s" relatively small niche brand for motocross primarily specializes in protective racewear for motorcross athletes and Petitioners secondary goods. Respondent feels that there is no reasons both brands can't exist independently.

10. Respondent Disagrees

Respondent had no knowledge or information regarding Petitioners mark at the time of application for Thoro (stylized mark). Petitioner has no evidence of this knowledge by Respondent and Respondent feels these claims are meritless, frivolous and in bad faith.

11. Respondent disagrees - The goods are not in the same channel and sold to a separate consumer demographic. Petitioner's THOR mark is relatively obscure and caters to a very niche demographic. Respondent feels Petitioner is overstating the scope of its brand to justify challenging Respondents registered (10 Yrs) "Thoro" stylized mark.

14. Respondent Disagrees -

Respondent has never admitted to the-none use of the 'Thoro"(Stylized) mark at any time. The respondent has only admitted to not having the information available at the time of request. The accusations are frivolous, baseless, in bad faith and without merit. Petitioner is referring to a previous opposition involving Respondents 'Thoro" (Standard) mark. Where discovery evidence was requested by petitioner, and delivered by respondent showing use and sale of Thoro (Stylized) mark. The discovery

submitted by Respondent to petitioner was labeled "Unverified" and not accepted due to "lack of information" regarding time and dates of photos. Respondent initially replied with "These documents are not available at this time" because the information regarding time and date of photos was still pending. Respondent was instructed by the board as well as Petitioner the board to respond with "These documents do not exist" opposed to "These documents aren't available at this time". This is the basis for petitioner's evidence of "Non-use" and frivolous fraud claims against Respondent. All documentation for the use of Thoro (Stylized) logo to support use and commerce are presently available. All "admission and documentation" of "Non-use" that petitioner allegedly has is unverifiable and unreliable.

15. Respondent Disagrees -

Respondent feels Petitioner is attempting to mislead the board based on incomplete information from a previous opposition.

16. Respondent Disagrees

Respondent asserts that there was ongoing and continuous use of Thoro (Stylized) mark. All claims that Petitioner is making to the board are fabricated and misleading. Petitioner was supplied all documentation of use of Thoro (Stylized mark) during a previous opposition of Respondents Thoro 'Standard' mark application. Respondent believes that the only way Petitioner can challenge his longstanding mark is to mislead and misdirect the board as to the intention behind his actions during the application and maintenance process. Respondent's neglect to keep track of all sales marketing and material, time and dates for 10 years is quite unreasonable and is not proof of fraud. Maybe carelessness, but not Fraud. Respondent feels that the marks are not confusingly similar in sound spelling or meaning. No effort was made to deceive the board, this is a clerical issue not a 'Fraud' issue.

19. Respondent Disagrees

Respondent feels that petitioner is in bad faith manipulating, and distorting information from a previous proceeding to falsely and frivolously accused Respondent of fraud. There was and has never been an attempt to deceive the board regarding the registered 'Thoro' (Stylized) trademark, and Petitioner has no credible or reliable evidence to support their claims. Respondent has been using 'Thoro' (Stylized) mark continuously and concurrently throughout its application and registration.

Respectfully Submitted

LeMar X Lewis

Date July-25th 2016

A handwritten signature in black ink, appearing to read "LeMar X Lewis", written over a horizontal line.

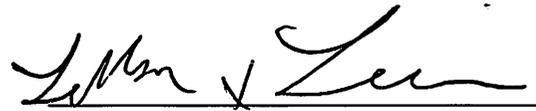
LeMar X. Lewis

878 Summit Greens Blvd

Clermont Fl 34711

Certificate Of Service

I hereby certify that a true and complete copy of the forgoing Response to the Petition to Cancel has been served on Petitioner on July 25th 2016 by email to the following address
tvold@vwiplaw,Agore@vwiplaw

A handwritten signature in black ink, appearing to read "LeMar X Lewis", written over a horizontal line.

LeMar X. Lewis