

ESTTA Tracking number: **ESTTA140779**

Filing date: **05/15/2007**

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 parties request to cancel indicated registration.

Petitioner Information

Name	H-D Michigan, Inc.		
Entity	Corporation	Citizenship	Michigan
Address	315 W. Huron, Suite 400 Ann Arbor, MI 48103 UNITED STATES		

Name	Harley-Davidson Motor Company, Inc.		
Entity	Corporation	Citizenship	Wisconsin
Address	3700 W. Juneau Avenue Milwaukee, WI 53208 UNITED STATES		

Attorney information	Gina L. Durham DLA Piper US LLP PO Box 64807 Chicago, IL 60664-0807 UNITED STATES gina.durham@dlapiper.com, ch.tm@dlapiper.com Phone:(312) 368-4000		
----------------------	--	--	--

Registration Subject to Cancellation

Registration No	1981120	Registration date	06/18/1996
Registrant	CRAIG R. BELL 973 Jamacha Road Unit A El Cajon, CA 92019 UNITED STATES		
Goods/Services Subject to Cancellation	Class 016. First Use: 1995/03/00 , First Use In Commerce: 1995/03/00 Goods/Services: printed materials, namely decals		
Grounds for Cancellation	Fraud 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) Torres v. Cantine Torresella S.r.l. Abandonment Trademark Act section 14		

Related Proceedings	05 CV 2151 pending in the United States District Court for the Southern District of California
---------------------	--

Attachments	1981120.pdf (6 pages)(100964 bytes)
-------------	--

Signature	/Gina Durham/
Name	Gina L. Durham
Date	05/15/2007

In Re Registration No. 1981120
Registered on June 18, 1996

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

**Harley-Davidson Motor Company and
H-D Michigan, Inc.,**

Petitioners,

v.

**Craig R. Bell (California Sole
Proprietorship) DBA Destinee'-
Eploriums,**

Registrant.

Cancellation No.

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION TO CANCEL

H-D Michigan, Inc., a Michigan Corporation having its principal business address at 315 W. Huron St., Suite 400, Ann Arbor, MI 48103 and **Harley-Davidson Motor Company**, a Wisconsin Corporation having its principal business address at 3700 W. Juneau Avenue, Milwaukee, WI 53208, believe that they will be damaged by the continued presence on the Register of Registration No. 1981120 for the mark RIDE HARD TRANSCENDING THE COMPETITIVE MIND SET! (stylized letters) ("the '120 Registration"), registered by Craig R. Bell ("Registrant"), and hereby petitions to cancel registration of such mark under Section 14 of the Trademark Act of July 5, 1946, 15 U.S.C. § 1064.

The grounds for the petition are as follows:

PETITIONER AND IT'S FAIR USE OF RIDE HARD

1. H-D Michigan, Inc., and its affiliate, Harley-Davidson Motor Company, Inc., d/b/a Harley-Davidson Motor Company, and their predecessors-in-interest and affiliated entities (collectively referred to hereinafter as "Harley-Davidson" or "Petitioner"), have for many years been engaged in the business of manufacturing, distributing and selling motorcycles, motorcycle parts and accessories, and clothing, as well as a wide variety of other goods and services.

2. For at least two decades, Petitioner has used various wording, including variations of the catchphrase "ride hard," decoratively on merchandise and descriptively in advertising for its merchandise.

REGISTRANT'S LAWSUIT FOR TRADEMARK INFRINGEMENT

3. On July 17, 1995, Registrant applied to register the phrase "Ride Hard Transcending the Competitive Mind Set!" under Section 1(a) of the Trademark Act in connection with "printed materials, namely decals."

4. On June 18, 1996, Registrant received the '120 Registration for the mark RIDE HARD TRANSCENDING THE COMPETITIVE MIND SET! (stylized letters) in class 16 for "printed materials, namely decals."

5. On November 21, 2005, Registrant filed suit in United States District Court for the Southern District of California, Case No. 05 CV 2151 L BLM ("Lawsuit") against H-D Michigan, Inc. and Harley-Davidson Motor Company, Inc. asserting the '120 Registration and alleging trademark infringement and related claims for Petitioner's use of "ride hard."

6. Petitioner has since learned that Registrant did not use the alleged mark shown in the '120 Registration in connection with the above-listed goods between 2001 and 2005.

COUNT I

FRAUDULENT SECTION 8 AND 15 DECLARATION

7. Petitioner realleges and incorporates by reference paragraphs 1 through 6.

8. In his combined Section 8 and 15 affidavit filed June 17, 2002, Registrant declared that he "is using or is using through a related company the mark in commerce on or in connection with the goods/services identified above ... The mark has been in continuous use in commerce for five consecutive years after the date of registration ... and is still using the mark in commerce on or in connection with all goods and /or services listed in the existing registration..."

9. During deposition in the Lawsuit, Registrant testified that he did not use the "Ride Hard" mark in connection with any goods, including those in the '120 Registration, between 2001 and 2005.

10. Registrant knowingly and deliberately made several misrepresentations to the United States Patent and Trademark Office ("USPTO") when Registrant filed the combined Section 8 and 15 declaration on June 17, 2002 for the '120 Registration. Registrant's misrepresentations in his declaration include that (1) he was using the mark in commerce, (2) the mark had been in continuous use in commerce for five consecutive years after the date of registration, and (3) he was still using the mark in commerce on or in connection with all goods listed in the existing registration.

11. In making these misrepresentations to the USPTO, Registrant intended to maintain and/or renew a registration to which he was not entitled.

12. Registrant committed fraud upon the USPTO.

13. Had the USPTO been aware that Registrant was not using the '120 Registration at the time the combined Section 8 and 15 affidavit was filed, the USPTO would have cancelled the

'120 Registration.

14. The '120 Registration should be cancelled because Registrant committed fraud upon the USPTO by making misrepresentations that were material to the USPTO's continued registration of the '120 Registration.

COUNT II

FRAUDULENT SECTION 8 AND 9 DECLARATION

15. Petitioner realleges and incorporates by reference paragraphs 1 through 14.

16. In his combined Section 8 and 9 affidavit filed June 16, 2006, Registrant declared that he "is using ... the mark in commerce on or in connection with the goods/services identified ..."

17. On information and belief, Registrant is not making use in commerce of the mark alleged in the '120 Registration.

18. On information and belief, from 2005 to present, Registrant has, at best, made only token use of the mark alleged in the '120 Registration and such use is not sufficient to constitute bona fide use of a mark in the ordinary course of trade.

19. Registrant made a knowing and deliberate misrepresentation to the USPTO when Registrant made the combined Section 8 and 9 declaration on June 16, 2006 for the '120 Registration. Registrant misrepresented in his declaration that he was still using the mark in commerce on or in connection with all goods listed in the existing registration.

20. In making these misrepresentations to the USPTO, Registrant intended to maintain and/or renew a registration to which he was not entitled.

21. Registrant committed fraud upon the USPTO.

22. Had the USPTO been aware that Registrant was not using the mark alleged in the '120 Registration at the time the combined Section 8 and 9 affidavit was filed, the USPTO would have cancelled the '120 Registration.

23. The '120 Registration should be cancelled because Registrant committed fraud upon the USPTO by making misrepresentations that were material to the USPTO's continued registration of the '120 Registration.

COUNT III

ABANDONMENT

24. Petitioner realleges and incorporates by reference paragraphs 1 through 23.

25. Through Registrant's own admission during his deposition in the Lawsuit, Registrant did not use the mark shown in the '120 Registration in commerce, between 2001 and 2005.

26. On information and belief, from 2005 to present Registrant has made only token use of the mark shown in the '120 Registration and such use is not sufficient to constitute bona fide use of a mark in the ordinary course of trade.

27. On information and belief, Registrant has failed to stop widespread use by others of the alleged mark shown in the '120 Registration in connection with the same types of goods or services existing in the registration. This failure to police has caused the alleged mark shown in the '120 Registration to lose any strength, distinctiveness, and indication of origin it may have ever had.

28. Due to: (a) Registrant's non-use for at least four consecutive years, (b) Registrant's token only use from 2005 to present, and/or (c) Registrant's failure to stop widespread use by others, Registrant has hereby abandoned the alleged mark shown in the '120 Registration within the meaning of Section 45 of the Trademark Act of 1946, 15 U.S.C. § 1127.

29. Given that the alleged mark shown in the '120 Registration has been abandoned by Registrant, the registration is subject to cancellation under Section 14 of the Trademark Act of 1946, as amended, 15 U.S.C. § 1064.


WHEREFORE, Petitioner files this Petition to Cancel and prays that the aforesaid registration be cancelled; and for such other and further relief as may be deemed just and proper.

The filing fee of \$300.00 and any additional fees required for this Petition to Cancel should be charged to Deposit Account No. 18-2284. Please address all correspondence regarding this opposition to:

Gina L. Durham
DLA PIPER US LLP
P.O. Box 64807
Chicago, Illinois 60664-0807
(312) 368-4000
gina.durham@dlapiper.com

Respectfully submitted,

Dated: May 15, 2007

By: 
Gina L. Durham
K. Danica Ray
DLA PIPER US LLP
P.O. Box 64807
Chicago, IL 60664-0807
Telephone: (312) 368-4000

Attorneys for Petitioner
**Harley-Davidson Motor Company and
H-D Michigan, Inc.**