

ESTTA Tracking number: **ESTTA158832**

Filing date: **08/24/2007**

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

Proceeding	92047836
Party	Defendant Wilber L. Fletcher, Sr.
Correspondence Address	Wilber L. Fletcher, Sr. P.O. Box 47132 Forestville, MD 20753 UNITED STATES wlfproductionsin@aol.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Christopher P. Benjamin
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Signature	/Christopher P. Benjamin/
Date	08/24/2007
Attachments	Motion To Dismiss or More Definite Statement - final.pdf (3 pages)(15135 bytes)

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

REGISTRATION NO: 3080874

PETITION TO CANCEL NO: 92047836

MARK: THE DYNAMIC SUPERIORS

CORRESPONDANT ADDRESS:

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INTERNATIONAL CLASS: 41

REGISTRATION DATE: 4/11/2006

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MOTION TO DISMISS PETITION FOR CANCELLATION
OR IN THE ALTERNATIVE
A MOTION FOR A MORE DEFINITE STATEMENT

COMES NOW, the Registrant, Wilber Fletcher, by and through counsel, in response to the Petition for Cancellation (the "Petition") as filed by George W. Spann ("Petitioner") to move the Trademark Trial and Appeal Board to dismiss the Petition or in the alternative to order Petitioner to file a more definite statement and in support thereof states as follows:

1. Petitioner filed the Petition on July 20, 2007 to cancel the registration of Registrant's filed Trademark Application for "THE DYNAMIC SUPERIORS" (the

“Mark”). The Petition avers, “The defendant’s mark THE DYNAMIC SUPERIORS so resembles the mark or trade name DYNAMIC SUPERIORS previously used in the United States by plaintiff and not abandoned, as to be likely, when used on or in connection with the goods or services of the defendant, to cause mistake, or to deceive.”

2. Petitioner’s Petition to Cancel is not in numbered paragraphs as required by §309.03(a)(2) of the Trademark Trial and Appeal Board’s Manual of Procedure and Fed. R. Civ. P. 10(b).

3. The Petition does not contain a statement of standing or a grounds for opposition as required by §309.03(a)-(c) of the Trademark Trial and Appeal Board’s Manual of Procedure.

4. Petitioner has failed to state a claim for which relief can be granted and the Petition should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

5. Petitioner’s pleading is so vague and/or ambiguous that Registrant can not frame a responsive pleading; and in the alternative to dismissal, moves for a more definite statement pursuant to Fed. R. Civ. P. 12(e).

WHEREFORE, Registrant respectfully moves the Trademark Trial and Appeal Board to dismiss the Petition; or in the alternative, for an order requiring the Petitioner to file a more definite statement as required by law.

Respectfully submitted,

WILBER FLETCHER, Registrant.
By Counsel.

/s/ Christopher P. Benjamin
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CERTIFICATE OF SERVICE

The undersigned certifies a copy of the foregoing has been sent via, ESTTA,
electronic mail, and mailed, first class mail, postage prepaid, this 24th day of August,
2007 to:

Stephen Swift
Swift Law Office
800 Diagonal Road, Suite 600
Alexandria, VA 22314
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/s/ Christopher P. Benjamin
Christopher P. Benjamin