

4. Since its first use of the WHEN TWO BECOME ONE mark, Martin Flyer has built up extensive and valuable goodwill in the mark.
5. As a result of the use and promotional efforts of Martin Flyer, the WHEN TWO BECOME ONE mark has come to identify the goods of Martin Flyer.
6. After Martin Flyer began using its WHEN TWO BECOME ONE mark in commerce, Respondent began using the WHEN TWO BECOME ONE mark in connection with jewelry.
7. Sandberg & Sikorski, Inc. applied for registration of the WHEN TWO BECOME ONE mark (Application Serial No. 85/094,569) on July 28, 2010 with the United States Patent and Trademark Office (“USPTO”), based on an intent-to-use the mark in commerce.
8. Upon information and belief, Sandberg & Sikorski, Inc. subsequently assigned the mark to Respondent. Respondent later filed an allegation of use claiming a date of first use of October 24, 2011 and date of first use in interstate commerce of October 24, 2011.
9. Respondent’s registration covers “jewelry” in International Class 14. The subject registration bearing Registration No. 4,068,204 (“Registration”), subsequently issued on December 6, 2011 and is less than five years old.
10. On March 14, 2011, Martin Flyer filed a use-based trademark application, Serial No. 85/266,581, with the USPTO to register the mark WHEN TWO BECOME ONE covering “jewelry” (“Application”). The Application claims Martin Flyer’s first use as being at least as early as February 20, 2008 and first use in interstate commerce as being at least as early as February 20, 2008.
11. Martin Flyer’s Application is for an identical mark and the same goods in International Class 14 as those identified in Respondent’s Registration.
12. On July 17, 2012, the USPTO issued a final office action refusing registration of Martin Flyer’s WHEN TWO BECOME ONE mark due to a likelihood of confusion with Respondent’s registration of the WHEN TWO BECOME ONE mark.
13. Martin Flyer’s use of its mark WHEN TWO BECOME ONE predates October 24, 2011, Respondent’s identified first date of use of its mark WHEN TWO BECOME ONE in commerce, and also

predates the filing date of the application that matured to Respondent's Registration No. 4,068,204. Thus, Martin Flyer has priority of use in commerce with respect to the WHEN TWO BECOME ONE mark.

14. Respondent's Registration is likely to cause confusion, or to cause mistake, or to deceive consumers. Respondent's registered mark, WHEN TWO BECOME ONE, is identical to Martin Flyer's mark, and the goods in International Class 14 to which the mark is applied by Martin Flyer and by Respondent are the same, namely, jewelry.

15. The existence of Respondent's Registration on the Principal Register has thus far barred Martin Flyer's Application to register Martin Flyer's WHEN TWO BECOME ONE mark on the Principal Register, in spite of Martin Flyer's extensive prior use of the mark in commerce and acquired goodwill in connection with jewelry in International Class 14 identified above, that predates the October 24, 2011 date of first use recited in Respondent's Registration.

16. As a result of the foregoing, Martin Flyer is and will be damaged by Respondent's Registration on the Principal Register, and by Respondent's continuous and unlawful use of the registered WHEN TWO BECOME ONE mark.

PRAYER FOR RELIEF


WHEREFORE, for the foregoing reasons and other reasons the Board may deem sufficient, Petitioner respectfully requests that Federal Registration No. 4,068,204 be cancelled and this Petition for Cancellation be sustained in favor of Petitioner.

Petitioner hereby appoints the law firm of Feldman Law Group, P.C. to act as attorneys for Petitioner herein, with full power to prosecute said cancellation, to transact all relevant business in connection with said cancellation and to receive all official communications in connection with this cancellation.

Please charge any pertinent fees to Deposit Account No. 06-0515.

Dated: December 21, 2012

Respectfully submitted,
FELDMAN LAW GROUP, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December 2012, a true and correct copy of the foregoing
PETITION FOR CANCELLATION was duly sent by first class mail to:

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