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

Proceeding	92065911
Party	Defendant NERO World, LLC
Correspondence Address	JOVANNA R BEARDEN BEARDEN LAW 104 S MAIN STREET BUTLER, MO 64730 UNITED STATES Email: jovannabearden@gmail.com, email@bearden.law
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Jovanna R. Bearden
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Date	11/06/2017
Attachments	MTD Amended Complaint - Ford.pdf(124891 bytes )

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

In the matter of trademark Registration No. 4657988  
For the mark NERO

Joseph Valenti, )  
 )  
 )  
Plaintiff, )  
 ) Cancellation No. 92065911  
v. )  
 )  
NERO World, LLC, )  
 )  
 )  
Defendant, )  
 )

**MOTION TO DISMISS PLAINTIFF’S FIRST AMENDED PETITION**

Comes now Jovanna Bearden, attorney for Defendant NERO World, LLC, and files Defendant’s Motion to Dismiss First Amended Petition. In support of this motion, Defendant states as follows.

A Motion to dismiss for failure to state a claim upon which relief can be granted is a test solely of the legal sufficiency of a complaint. *Advanced Cardiovascular Systems Inc. v SciMedi Life Systems, Inc.*, 988.F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993). The Complaint must allege such facts as would, if proved, establish that the plaintiff is entitled to the relief sought, that is, that (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for cancelling the subjection registration. *Young v. AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998).

Plaintiff, Joseph Valenti, does not have a “real interest” in this proceeding, nor does he have a “direct and personal stake” in the outcome of the proceeding, and therefore lacks standing

For a plaintiff to demonstrate standing in a petition, there must be facts plead which show a “real interest” in the proceeding, and a “reasonable basis” for the plaintiff’s belief that he would suffer some kind of damage if the mark is not canceled. *Empresa Cubana del Tabaco v. General Cigar Co.*, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014). To plead a “real interest,” plaintiff must allege a “direct and personal stake” in the outcome of the proceeding. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1026 (Fed. Cr. 1999). The allegations to support plaintiff’s belief of damage must have a reasonable basis “in fact.” *Ritchie*, 170 F.3d 1092, 50 USPQ2d at 1027.

Here, Plaintiff, Joseph Valenti, does not have a “real interest” in this proceeding, has no “reasonable basis” for believing that he would suffer some kind of damage from the mark at issue, and has no “direct and personal stake” in the outcome of the proceeding. Throughout the Amended Petition, Plaintiff describes himself as the owner and operator of businesses which use the NERO mark. “The sole owner and sole proprietor of various business ventures, such as Nero Live Adventure Games, NERO, New England Roleplaying Organization, NERO Game Systems, as well as being the sole President and Owner of NERO International Holding Co. Inc. (“Petitioner’s Companies”).” Amended Petition paragraph 4(c).

Plaintiff then references these companies throughout the factual paragraphs of the Amended Complaint, describing the elements of the grounds for cancellation through description of the activities of these companies. This is seen in Amended Petition Paragraphs 9, 10, 12, 13, 26, 27, 29, 30. For example:

“9. Petitioner has continuously used the marks NERO and New England Role Playing Organization with Petitioner’s Website, Petitioner’s Services, Petitioner’s Copyrights, and Petitioner’s Companies since at least as early as August 3, 1998.”

“27. Petitioner, through Petitioner’s Website, Petitioners Services, Petitioner’s Copyrights, and Petitioners [sic] Companies, has developed a substantial client base, which includes over 5,000 members, 31 NERO Licensed Chapters in the USA, and 3 NERO licensed Chapters outside of the USA.”

Therefore, it appears that everywhere Plaintiff references his damages, he is actually referring to damages that these companies are suffering through their alleged use of the marks NERO and New England Role Playing Organization. For example, Paragraph 33 states that Petitioner will be damaged, and then goes on to say that the damage will result from “customers... [being] confused... as to the source or origin of Registrant’s Services sold under the mark...”

As a result, it appears that Plaintiff does not actually himself have a “direct and personal stake” in the outcome of these proceedings, and lacks standing to pursue the same.

Because Plaintiff lacks standing to pursue this action, Defendant moves that the Amended Petition for Cancellation be dismissed with prejudice.

Dated: November 6, 2017

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CERTIFICATE OF SERVICE

I, Jovanna R. Bearden, certify that on this 6th day of November, 2017, a true and correct copy of the foregoing document was filed with the Trademark Trial and Appeal Board via the Electronic System for Trademark Trials and Appeals and sent by email to Counsel for Plaintiff, Phillip Thomas Horton at [NEROLitigation@gmail.com](mailto:NEROLitigation@gmail.com) .

Dated: November 6, 2017

By: / Jovanna R. Bearden /  
Jovanna R. Bearden