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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	Other Motions/Papers
Filer's Name	Jovanna R. Bearden
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Signature	/Jovanna R Bearden/
Date	12/04/2017
Attachments	Motion to Strike 2nd Amended Complaint - Ford.pdf(90725 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

Registered on December 16, 2014

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

**DEFENDANT’S MOTION TO STRIKE SECOND AMENDED PETITION FOR  
CANCELLATION,  
OR IN THE ALTERNATIVE,  
MOTION FOR EXTENSION OF TIME**

Comes now Defendant, Nero World LLC, by and through counsel, Jovanna Bearden, and files its Motion to Strike Second Amended Petition for Cancellation, or in the Alternative, Motion for Extension of Time. These motions are made in accordance with Fed. R. Civ. P 15(a) and 6(b). In support of this Motion Defendant states the following:

1. This Petition for Cancellation was filed on April 13, 2017. At that time Plaintiff’s original Petition for Cancellation was filed. Defendant responded to this Petition by filing a Motion to Dismiss. The Tribunal granted Defendant’s Motion to Dismiss, and gave Plaintiff leave to file an amended petition in its Order dated September 14, 2017.

2. On October 14, 2017, Plaintiff filed its First Amended Petition for Cancellation in this action. On November 6, 2017, Defendant moved to dismiss the First Amended Petition. Plaintiff did not respond to this Motion to Dismiss, and has now filed a Second Amended Petition for Cancellation, dated November 27, 2017. Defendant moves to strike Plaintiff's November 27, 2017 Second Amended Petition for Cancellation.
3. Federal Rule of Civil Procedure 15(a) governs amendments of pleadings in cancellation actions. A petitioner may amend their pleading once as a matter of course, 21 days after a responsive motion is filed pursuant to Rule 12 b, thereafter the petition can only be amended with leave of the Court or with consent of the parties. FRCP 15(a).
4. Here, the parties did not consent to a Second Amended Petition being filed, and Plaintiff did not seek leave of the Court to amend its petition. Therefore, Defendant asks that Plaintiff's Second Amended Petition for Cancellation be struck from the record as improperly filed, given that it is a second amendment to the petition, without consent, and without leave of the court.
5. In the alternative, Defendant moves this Court for an extension of time to respond to Plaintiff's Second Amended Petition for Cancellation pending the outcome of Plaintiff's Motion to Amend Name. Defendant assumes that should Plaintiff's motion be granted, Plaintiff would also be granted leave to amend his Petition at that time. Should that be the case, any response that Defendant files to the Second Amended Petition currently on file would be moot. Therefore, Defendant asks that his response time to the Second Amended Petition be extended until such time as Plaintiff's Motion to Change Name is ruled on.

Dated: December 4, 2017

By: / Jovanna R. Bearden /  
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CERTIFICATE OF SERVICE

I, Jovanna R. Bearden, certify that on this 4th day of December, 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: December 4, 2017

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