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Filing date: **12/08/2017**

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

Proceeding	92065911
Party	Plaintiff Joseph Valenti
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Submission	Opposition/Response to Motion
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Date	12/08/2017
Attachments	PETITIONERS RESPONSE TO DEFENDANTS MOTION TO STRIKE SECOND AMENDED PETITION FOR CANCELLATION OR IN THE ALTERNATIVE MOTION FOR EXTENSION OF TIME.pdf(264318 bytes )

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

In the matter of trademark Registration No. 4697406  
For the mark NERO New England Roleplaying Organization  
Registered on March 3, 2015  
In the matter of trademark Registration No. 4657988  
For the mark NERO  
Registered on December 16, 2014

Joseph Valenti,  Petitioner,  v.  William J. Bearden d/b/a NERO Central,  Registrant.	Cancellation No. 92065883
Joseph Valenti,  Petitioner,  v.  Ford Ivey d/b/a NERO World, LLC,  Assingee.	Cancellation No. 92065911

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

COMES NOW, Joseph Valenti (“Petitioner”), by and through his Attorney,  
Phillip Thomas Horton, files this response to Defendant’s Motion to Strike

1 Second Amended Petition For Cancellation, Or In The Alternative, Motion For  
2 Extension of Time (“Motions”). In response to the Motions, Petitioner asserts:

3 1. Petitioner filed its Petition for Cancellation on April 13, 2017.  
4 Defendant responded to this Petition by filing a Motion to Dismiss. The Tribunal  
5 granted Defendant’s Motion to Dismiss, and gave Plaintiff leave to file an  
6 amended petition in its Order dated September 14, 2017.

7 2. On October 14, 2017, Plaintiff filed its First Amended Petition for  
8 Cancellation (“First Amended Petition”) in this action.

9 3. On November 6, 2017, Defendant moved to dismiss the First  
10 Amended Petition by filing a 12(b)(6) motion (“11/06 Motion”).

11 4. Plaintiff did respond to this the 11/06 Motion by timely filing a  
12 Second Amended Petition for Cancellation (“Second Amended Petition”) pursuant  
13 to Fed. R. Civ. P. 15(a)(1)(B) and TBMP 503.03 on November 27, 2017, thereby  
14 making the First Amended Petition moot. See *Caymus Vineyards v. Caymus*  
15 *Medical Inc.*, 107 USPQ2d 1519, 1521 (TTAB 2013), *Dragon Bleu (SARL) v.*  
16 *VENM, LLC*, 112 USPQ2d 1925, 1926 (TTAB 2014), and *Fair Indigo LLC v. Style*  
17 *Conscience*, 85 USPQ2d 1536, 1537 (TTAB 2007).

18 5. Fed. R. Civ. P. 15(a) states, in (1) A party may amend its pleading  
19 once as a matter of course within: (A) 21 days after serving it, OR (B) if the  
20 pleading is one to which a responsive pleading is required, 21 days after service  
21 of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e),  
22 or (f), whichever is earlier. (emphasis added).

23 6. Defendant filed the 11/06 Motion, a responsive pleading, on  
24 November 6, 2017, and Petitioner responded to the 11/06 Motion by timely filing  
25 its Second Amended Petition on 11/27/2017.

26 7. The filing of Petitioner’s Second Amended Petition is within the 21-  
27 day period allowed by 15(a)(1)(B).

1           8.       TBMP 503.03 states: A plaintiff may amend its complaint within 21  
2 days after service of a motion under Fed. R. Civ. P. 12(b)(6) or with the written  
3 consent of every adverse party, or by leave of the Board, which is freely given  
4 when justice so requires.

5           9.       The filing of Petitioner’s Second Amended Petition is within the 21-  
6 day period allowed by TBMP.

7           10.      In both cases, Petitioner’s Second Amended Petition is timely filed,  
8 should not be dismissed, and should be given full consideration.

9           11.      Since Petitioner’s Second Amended Petition was timely filed, there  
10 was no need to have the consent of the Defendant, nor was there a need to ask by  
11 leave of the Board.

12          12.      If, for some reason, the Board finds that Petitioner’s Second  
13 Amended Petition was not timely or properly filed, Petitioner asks that Board  
14 allow the Second Amended Petition to be filed.

15          13.      Petitioner also objects to any extension of time requested by  
16 Defendant.

17          14.      Under TBMP 509.01(a), Defendant has not “...set forth with  
18 particularity the facts said to constitute good cause for the requested extension;  
19 mere conclusory allegations lacking in factual detail are not sufficient.”

20          15.      Defendant’s only reasoning for an extension is due to Petitioner’s  
21 Motion to Amend Name, but lays out no good cause or facts as to why an  
22 extension should be granted.

23          16.      In addition to not showing any good cause or facts, Defendant has  
24 failed to demonstrate the extension of time is not due to their “...lack of diligence  
25 or unreasonable delay in taking the required action during the time previously  
26 allotted therefor.” TBMP 509.01(a)

27          17.      Further, the ruling on Petitioner’s Motion to Amend Name does not

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change any of the claims asserted by Petitioner.

18. If the Board does grant an extension, Petitioner asks that the trial dates be reset.

For the foregoing reasons, Petitioner asks that Defendant's Motions be denied and Petitioner's Second Amended Petition be allowed.

Dated: 12/08/2017

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**CERTIFICATE OF SERVICE**

I, Phillip Thomas Horton, Esq., certify that 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 was sent via email to Jovanna Bearden at the following email address:

jovannabearden@gmail.com

Dated: 12/08/2017

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