

ESTTA Tracking number: **ESTTA1257368**

Filing date: **12/31/2022**

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

Proceeding no.	92081049
Party	Defendant F Zero Inc
Correspondence address	F ZERO INC 6230 CANOGA AVE FL 15 WOODLAND HILLS, CA 91367 UNITED STATES Primary email: afitroozi@fzeroracing.com No phone number provided
Submission	Answer
Filer's name	Matthew Nelles
Filer's email	mnelles@nelleslawfl.com, yberstein@nelleslawfl.com
Signature	/Matthew Nelles/
Date	12/31/2022
Attachments	Answer to Petition to Cancel.pdf(147781 bytes)

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

ZERO MOTORCYCLES, INC.,	:	Cancelation No: 92081049
	:	
Petitioner,	:	Registration No. 6673842
	:	Mark: F ZERO RACING
	:	Registered: March 15, 2022
vs.	:	
	:	
F ZERO INC.,	:	
	:	
Registrant.	:	

ANSWER TO PETITION FOR CANCELLATION

Registrant, F ZERO INC., answers the Petition for Cancelation filed by Petitioner, ZERO MOTORCYCLES, INC., concerning Registration No. 6673842 for F ZERO RACING (the “Registered Mark”) and states:

FACTS

Petitioner’s Business and Trademarks¹

1. Without knowledge and therefore denied.
2. Without knowledge and therefore denied.
3. Aside from what may appear on the principal register, Registrant is without knowledge of these allegations and therefore denies them.

¹ Registrant incorporates Petitioner’s headings for ease of reference only and without any implied admissions of same.

4. These are legal conclusions to which no response is required. Notwithstanding, Registrant denies that any of Petitioner's asserted registrations is grounds, whether alone or in combination with any other facts or evidence, to cancel the Registered Mark.

5. Aside from the fact that the public has never associated the Registered Mark or any formative variations of the Registered Mark with Petitioner, Registrant is without knowledge of these allegations and therefore denies them.

6. Without knowledge and therefore denied.

Registrant's Business and Registration

7. Admitted

8. Admitted (although for International Class 042 the filing basis was 1(b)).

9. Admitted, but also in International Class 042

10. Admitted only as to what is stated in Registrant's Registration Certificate.

11. Admitted that those services are identified in the Registration Certificate.

ASSERTED GROUNDS FOR CANCELLATION

Likelihood of Confusion

12. Registrant reasserts its answers to nos. 1-11 as though set forth in full herein.

13. Denied that Petitioner has priority of rights. While Petitioner may have first used its marks prior to Registrant's first use of the Registered Mark, the parties' respective marks are unrelated and not confusingly similar.

14. Denied, and specifically denied that the Registered Mark "focuses" on "Zero" and that other than that singular word, there is any similarity whatsoever in the sound, pronunciation, appearance, or commercial impression between the parties' respective marks.

15. Denied, and specifically denied that there is any relationship between the parties' respective products and services. Indeed, consistent with its Registration, Registrant's products and services are directed to automobiles, not motorcycles.

16. Denied

17. Denied

18. Denied

Affirmative Defenses

1. The ZERO term in Petitioner's pleaded registrations upon which it bases its allegations of confusing similarity is common, weak, and not sufficiently distinctive to claim exclusive rights to prevent the registration of other marks containing that term.

2. Petitioner has failed to adequately maintain, police and enforce its claimed rights in its registered marks in that, upon information and belief, there currently are numerous registered and unregistered third party marks that contain the term ZERO in relation to related products and services which, upon information and belief, Petitioner has not attempted to oppose, cancel or otherwise prevent.

3. The Petition should be denied based on laches and acquiescence. Petitioner deliberately elected, rather than oppose, to wait until the Registered Mark was registered and then to seek cancellation, which delay prejudiced Registrant. Petitioner otherwise delayed in asserting any alleged rights it claims to have.

4. Third parties have used similar marks for similar goods, thus Petitioner's marks are weak and entitled to a narrow scope of protection.

Wherefore, Registrant requests that the Petition for Cancellation be dismissed and that the Registered Mark be permitted to remain on the principal register.

Respectfully submitted,

By: /s/ Matthew S. Nelles

Matthew S. Nelles

Florida Bar No. 009245

mnelles@nelleslawFL.com

NELLES LAW GROUP

101 NE Third Ave., Suite 1500

Ft. Lauderdale, FL 33301

O: (954) 246-4800; D: (954) 246-4880

Eservice: yberstein@nelleslawFL.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 31, 2022, I electronically filed the foregoing with the U.S. Trademark Office and served it via email on Petitioner's counsel, Mike Rodenbaugh, Esq., Rodenbaugh Law, 584 Market Street, Box 55819, San Francisco, CA 94104, mike@rodenbaugh.com; secondary email(s): rodenbaugh@idiverselegal.com, leann@rodenbaugh.com.

/s/ Matthew S. Nelles