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

Proceeding	92058387
Party	Defendant Warner Bros Entertainment Inc.
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Submission	Motion to Dismiss - Rule 12(b)
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**IN THE TRADEMARK TRIAL AND APPEAL BOARD
OF THE UNITED STATES PATENT AND TRADEMARK OFFICE**

SOPHIA STEWART,

Petitioner,

v.

WARNER BROS. ENTERTAINMENT INC.,

Registrant.

Cancellation No. 92058387

MOTION TO DISMISS AMENDED PETITION TO CANCEL

Registrant, Warner Bros. Entertainment Inc. (“Registrant”), by its attorneys, Fross Zelnick Lehrman & Zissu, P.C., moves to dismiss the amended petition to cancel Registrant’s ENTER THE MATRIX mark pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The amended petition fails to state a claim on which relief may be granted because Petitioner Sophia Stewart lacks standing to bring this cancellation proceeding, and she has failed to state a claim for fraud, the primary ground on which she seeks to cancel the ENTER THE MATRIX mark. Furthermore, the other grounds that the amended petition merely references are not relevant to this proceeding. Therefore, this cancellation proceeding should be dismissed. Because Petitioner has a long history of harassing Registrant with legal proceedings, Registrant requests that the cancellation proceeding be dismissed with prejudice.

FACTS

A. Background and Procedural History

Registrant is a global leader in the creation, production, distribution, and marketing of motion pictures. In 1999, Registrant released *The Matrix*, the first movie in what became one of Registrant’s most successful science-fiction franchises. *The Matrix* depicts the world as a

simulated reality called the “matrix,” whose discovery by the main character, a computer hacker, draws him into an ongoing rebellion against the machines that control this simulated reality. *The Matrix* was critically praised and won four Academy Awards. In 2003, following up on the success of *The Matrix*, Registrant released *The Matrix Reloaded* and *The Matrix Revolutions* (together with *The Matrix*, “*The Matrix Movies*”).

In connection with *The Matrix Movies*, Registrant owns a registration for the mark ENTER THE MATRIX, U.S. Reg. No. 3,408,950, for use in connection with, *inter alia*, motion picture films, audio-video tapes and discs, and various types of video and computer games, all featuring the fictional characters and elements from *The Matrix Movies*, in International Class 9. This registration issued to Registrant on April 8, 2008.

On December 16, 2013, Petitioner filed a petition to cancel the ENTER THE MATRIX mark. She asserted as her grounds for cancellation that the mark was deceptive under Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), and that the mark was procured by fraud. Petitioner provided no factual allegations in support of either of her claims.

On January 23, 2014, Petitioner filed a second petition to cancel, which appeared to be an amended petition, although it was not titled as such. The second petition seeks cancellation of the ENTER THE MATRIX mark primarily on the ground that the mark was procured by fraud; unlike the original petition, the second petition does not allege that the mark is deceptive under Section 2(a) of the Lanham Act.¹ Petitioner did not serve Registrant’s counsel with her second

¹ The amended petition also references several statutory provisions that provide other potential grounds for cancellation, but the amended petition only provides citations to these provisions and never makes any supporting factual allegations. *See* section C, *supra*. Moreover, as explained below, several of these alternative grounds for cancellation are no longer permissible given that Registrant’s ENTER THE MATRIX mark has been registered for more than five years. *See* section C, *supra*.

petition. Thus, on January 24, 2014, unaware of the second petition, Registrant filed a motion to dismiss the original petition.

At Registrant's request, on February 25, 2014, the interlocutory attorney held a telephone conference regarding Petitioner's second pleading. Under Rule 15 of the Federal Rules of Civil Procedure, Petitioner's time to file an amended pleading as of right had expired. Thus, the interlocutory attorney advised the parties that the Trademark Trial and Appeal Board (the "Board") would construe Petitioner's second pleading as a motion to amend her original petition. On February 27, 2014, the interlocutory attorney issued an order summarizing the February 25 telephone conference, which also ordered Registrant to respond to Petitioner's motion to amend by March 19, 2014.

On March 11, 2014, Registrant filed its response to Petitioner's motion to amend, stating that Registrant did not oppose Petitioner's motion to amend her pleading. As such, on March 19, 2014, the interlocutory attorney issued an order granting Petitioner's motion to amend and setting April 19, 2014 as the deadline for Registrant to answer or otherwise respond to the amended pleading.

B. Prior Legal Proceedings Brought by Petitioner

This is not the first time that Petitioner has sought legal relief based on her perceived, but nonexistent, intellectual property rights in *The Matrix* Movies. In 2003, Petitioner filed a lawsuit in the U.S. District Court for the Central District of California against, *inter alia*, Registrant and Andy and Larry Wachowski, the creators of *The Matrix* Movies, alleging copyright infringement and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). *See Stewart v. Wachowski*, 574 F. Supp. 2d 1074, 1078 (C.D. Cal. 2005), a true and correct copy of which is attached as Exhibit A to the Declaration of James D. Weinberger ("Weinberger Dec.")

submitted herewith. Petitioner claimed that *The Matrix* Movies infringed her rights in a screen treatment and a manuscript that she had authored, both of which were entitled “The Third Eye.” *Id.* at 1079, 1080-82. The Court granted the defendants’ motion for summary judgment on the copyright infringement claim, finding that the uncontroverted evidence demonstrated that the defendants had not had access to Petitioner’s works. *See id.* at 1098. The Court also held that Petitioner could not prove access through a showing of “striking similarity” because it was her burden to prove such striking similarity and she had failed to provide the Court with *The Matrix* Movies, and therefore the court could not engage in the side-by-side comparison required for a “striking similarity” analysis. *Id.* at 1103. Furthermore, in any event, Petitioner had admitted that the parties’ respective works were not similar. *See id.* at 1106-07. The Court also granted summary judgment on the RICO claim because uncontroverted evidence showed that the alleged predicate acts had not occurred. *See id.* at 1110.

Despite the dismissal of her entire case in California, Petitioner did not stop there. In December 2012, she again filed a complaint against Registrant and the Wachowskis, but this time in the U.S. District Court for the District of Nevada. Petitioner alleged that the defendants, who were the creators and distributors of the movie *Cloud Atlas*, falsely claimed during advertisements for *Cloud Atlas* that the movie was “from the creators of the Matrix Trilogy.” *See* Order at 1, *Stewart v. Warner Bros. Entm’t, Inc.*, 12-CV-1875 (PMP)(GWF), ECF No. 4 (D. Nev. Dec. 10, 2012) (Weinberger Dec. Ex. B). Petitioner claimed that she was the creator of *The Matrix* Movies and asserted that these advertisements constituted copyright infringement, trademark infringement, and unfair trade practices in violation of the Federal Trade Commission Act. *Id.*

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