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

24 March 2016

In the matter of trademark Registration No. 86744119

For the mark: FLIGHT SIM

Date registered: March 2, 2016

Maui Media Lab LLC

v.

1788918 Alberta Ltd.

PETITION TO CANCEL

Maui Media Lab LLC, Maui, Hawaii, P.O.Box 151, Kaunakakai, Hawaii, USA

To the best of petitioner's knowledge, the name and address of the current owner of the registration are:
Adam Berent dba 1788918 Alberta Ltd., 91 VICTORIA CROSS BLVD SW, CALGARY, T3E7W3,
CANADA

The above-identified petitioner believes that it/he/she will be damaged by the above-identified registration, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

#1 The registrant is attempting to register a generic term 'flight sim' the common abbreviation for flight simulator, that has been in common usage for decades, for its exclusive use, in violation of the Lanham Act.

15 U.S.C. § 1064 (1976). The six independent grounds for cancelling the registration of a mark delineated by § 1064 are: (1) fraudulent obtainment of registration; (2) registration in violation of 15 U.S.C. § 1052 or § 1054 (1976); (3) misrepresentation of the source of a product by or with permission of the registrant; (4) abandonment of registration; (5) inconsistency of continued protection with the governing statutes; and (6) genericness.

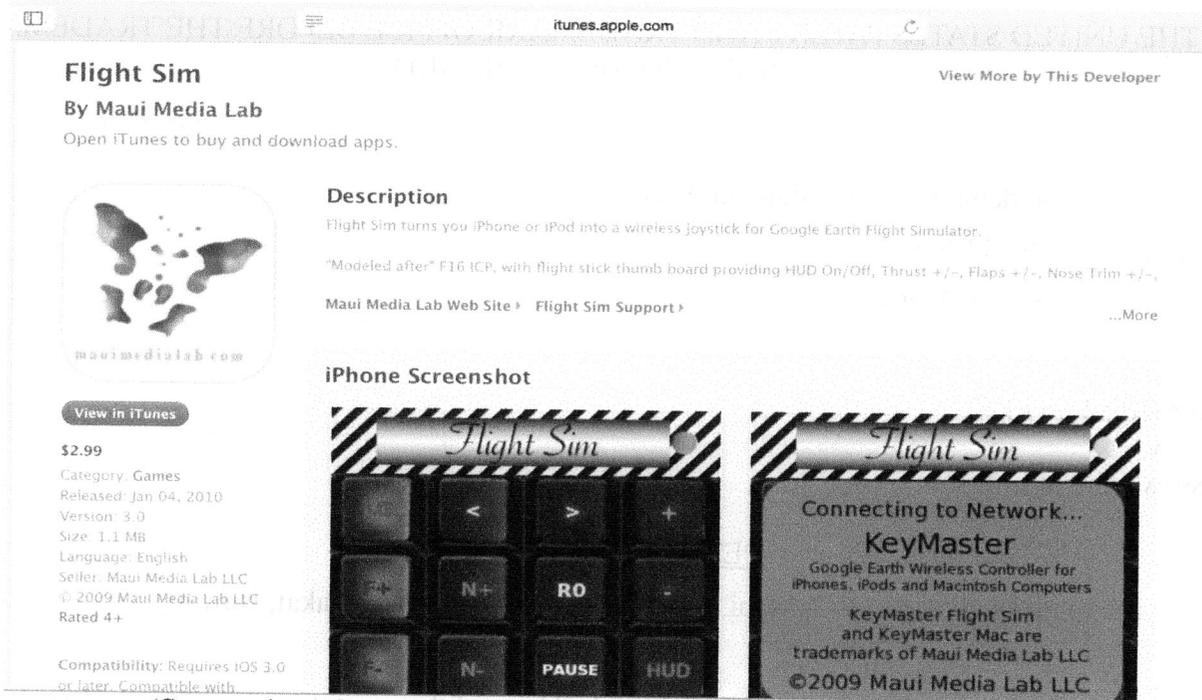
A quick Google Search reveals nearly four hundred citations of the term "flight sim" (353,000,) including the internet site FLIGHTSIM.COM, which is neither owned, operated, nor affiliated in anyway with the registrant.

#2 The petitioner has used the generic term to describe its product actively in the marketplace since the year 2009, a full seven years before this registration was published.

The petitioner has spent considerable resources promoting the product and being denied the ability to describe the product with the generic term that describes the petitioner's product will negatively effect the ability of the petitioner to continue to promote its products in the marketplace.



03-29-2016



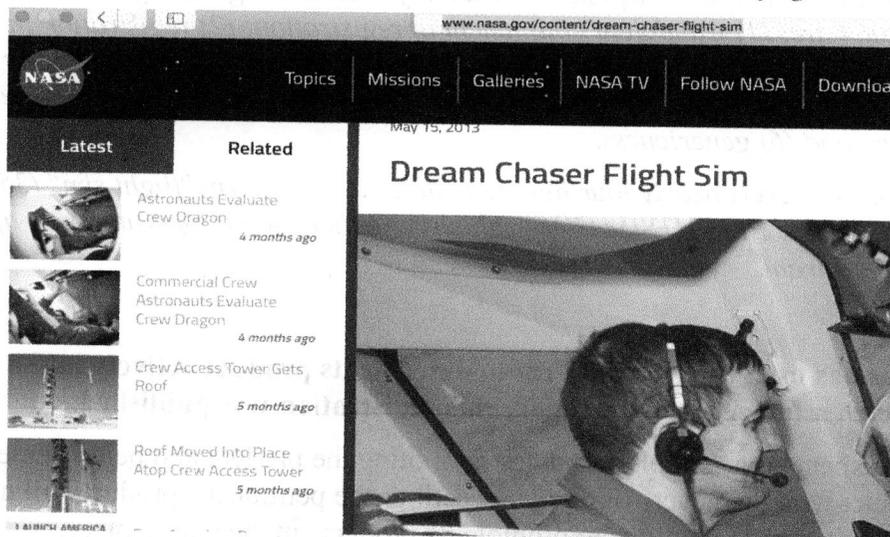
(Screen shot of Apple iTunes App Store marketing page for petitioner.)

#3 Uncountable others have used the generic term to describe their projects and their products since humans first dreamed of flying and throughout history.

The Flight Sim Museum - <http://www.index.migman.com>

#4 Many others, including the United States Government, the Department of Defense and that National Aeronautical and Space Administration have historically, and continue to use the generic term to describe their projects and their products contemporaneously.

The Dream Chaser Flight Sim - <http://www.nasa.gov/content/dream-chaser-flight-sim>



(NASA Screen Shot)

Additionally, a quick Google Search yields 537,000 "flight sim" products currently available in the legal marketplace.

#5 The registrant, knowingly and years after the fact, applied for registration of a generic term, that describes countless products, historically and contemporaneously produced and actively marketed by countless other manufacturers, including the petitioner.



(screen shot of Apple's iTune store marketing page for registrant)

#6 The registrant intends to use the registration of this generic term as a government sanctioned blunt hammer, improperly and incorrectly authorizing the registrant's claims and demands, specifically and illegally to effect restraint of trade and to compete unfairly.

The registrant intends to replace the petitioner's seven year old product with their own, to the detriment of the petitioner, the petitioner's existing customers and the petitioner's ability to market to new customers, by relabeling their product to the attempted, trademarked generic term, in order to force the removal of competitors' products, including the petitioners' products from legal markets, and preventing competitors, including and starting with the petitioner, to be able to even accurately describe their product in the legal marketplace.

Copy of registrant's claim to Apple Inc., demanding that petitioner's product name be turned over to the registrant:

Begin forwarded message:

*From: App Store Notices <AppStoreNotices@apple.com>
Subject: Apple Inc. (our ref# APP57605) Notice of Complaint
Date: March 11, 2016 at 4:40:32 PM PST
To: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Cc: reachadam@outlook.com*

Dear xxxxxx,

****Please include APP57605 in the subject line of any future correspondence on this matter.****

On 3/11/2016, we received a notice from 3583 Bytes ("Complainant") that Complainant believes your application named "Flight Sim" infringes Complainant's intellectual property rights. In particular, Complainant believes you are infringing its trademark and app name, thereby blocking Complainant from using it on the App Store.

Developer: Maui Media Lab
Provider: Maui Media Lab LLC
App Title: Flight Sim
Apple ID: 348579448

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You can reach Complainant through Adam Berent (email: reachadam@outlook.com), copied on this email. Please exchange correspondence directly with Complainant.

PRAY FOR RELIEF

The petitioner prays that this office will revoke the registrant's mark based on the prima facia evidence that clearly contests the registrant's application for trademark of a generic term in the United States of America.

Thank you for your reconsideration.

By 

Date

25 MAR 2016

Sam Epstein
Executive Director
Maui Media Lab LLC
P.O.Box 151
Kaunakakai, HI
96748