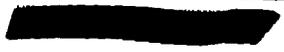


TTAB

DAVID B. PALLEY, ESQ.
Palley & Palley
103 Providence Mine Road, Suite 204
Nevada City, CA 95959
530-265-2900


09-03-2002
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #11

Attorney for Petitioner,
Roy E. Grabenauer

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

In the matter of trademark registration no. 1275045, registered on April 24, 1984

Roy E. Grabenauer, Petitioner)
vs.)
Pauline J. Kelzer, a.k.a.)
Pauline Kelzer Grabenauer)
Mark: ROYAK)
Intl Class: 12)
Reg. No. 1275045)
Reg. Date: April 24, 1984)

PETITION TO CANCEL

Cancellation No. _____

02 SEP 11 AM 12:10
TRADemark TRIAL AND
APPEAL BOARD

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

PETITION FOR CANCELLATION

Petitioner, ROY E. GRABENAUER, of 9091 Oak Avenue, Orangevale, California 95662, is the section 1(a) (i.e. use-based) applicant in Serial Number 75/717449 for the mark ROYAK used on the following goods: SCUBA Diver Float. He is the kayaking original "ROY" of "ROYAK." His June 1, 1999 application was blocked on section 2(d) grounds and has been suspended pending the outcome of this Petition for Cancellation.

Petitioner is a citizen of California and of the United States of America.

09/06/2002 WANDERSO 00000043 1275045

01 FC:376

300.00 OP

Petitioner believes that he is and will be damaged by the above identified registration, and he hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. The registered mark has been abandoned.

Registrant, Pauline J. Kelzer, has made no bona fide use of the ROYAK mark in the ordinary course of trade on Self-Bailing Divers' Paddleboards or Floats for well in excess of three consecutive years up to and including the present. Petitioner so avers on information and belief.

Of his personal knowledge, Petitioner avers that on or about October 6, 1985, Petitioner assigned to Registrant all his rights in certain ROYAK-related intellectual property, including United States Trademark Serial Number 73/ 383532 (i.e. the registration in question, 1,275,045) in exchange for "FIVE PERCENT (5%) of the gross income generated by Assignee from the use of said patents and trademarks." Since October 6, 1985, Petitioner has received no payment from Registrant on account of this contract nor any accounting of her income or expenses in relation to the ROYAK goods or mark.

Also of his personal knowledge, Petitioner avers that he and his son, Steven R. Grabenauer, use the ROYAK mark in commerce on Kayaks and SCUBA Diver Floats and have done so continuously for more than the past three consecutive years to present. (See www.royak.com .) Petitioner has at no time been aware of anyone else using the ROYAK mark on similar on any other goods. At no time has Registrant objected to or sought to prevent or exercised or sought to exercise quality control over this use of the ROYAK mark by Petitioner.

2. Registration of the mark was obtained fraudulently.

On September 3, 1982, when the challenged registration was filed, Petitioner and Registrant were married. The ROYAK business was Petitioner's separate property pursuant to common law and pursuant to a prenuptial agreement written by Registrant's attorney and which Registrant had insisted on. Petitioner trusted and reasonably relied on his then wife to handle this matter for him honestly. Registrant in 1982 never obtained Petitioner's permission to apply for the trademark in her sole name and concealed from Petitioner that she had done so. In so doing, she obtained the mark by fraud of Petitioner.

Likewise in the September 3, 1982 application, Petitioner defrauded the United States Patent and Trademark Office by misrepresenting to the PTO ownership of the mark and by concealing from the PTO that Petitioner, and not she, was the true owner of the mark. Petitioner is informed and believes that Registrant at the time knew that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements might jeopardize the validity of the application or any resulting registration.

During and about June of 1989, being warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, Petitioner is informed and believes that Registrant falsely declared to the PTO that she was the owner of the ROYAK trademark and that the mark was then in use by her in commerce. In fact, Petitioner is informed and believes, the mark then was not in her use in commerce nor was she exercising any control over its use in commerce by others.

Power of Attorney

In connection with this Petition for Cancellation, Petitioner provides this power of attorney appointing David B. Palley, of the law firm Palley & Palley, all members of the bar of the State of California, to act as attorneys for Petitioner herein, with full power to prosecute this cancellation, to transact all relevant business with the Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this cancellation.

Respectfully Submitted,

Dated: August 21, 2002

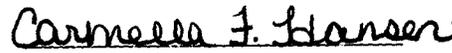

Roy E. Grabenauer, Petitioner

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service, as first class mail, postage prepaid, in an envelope addressed to:

BOX TTAB, Fcc
Commissioner for Trademarks
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

Date of Deposit: 08-29, 2002


Carmella F. Hansen



Grabenauer/tm/ROYAK/Intl CI 12

August 28, 2002

09-03-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #11

BOX TTAB, Fee
Commissioner for Trademarks
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

02 SEP 11 AM 12:21
TRADEMARK TRIAL AND
APPEAL BOARD

Re: Mark: ROYAK
Petitioner: Roy E. Grabenauer
Reg. No: 1275045
Reg. Date: April 24, 1984

Dear Sir/Madam:

Enclosed please find Petition to Cancel on behalf of Petitioner, Roy E. Grabenauer. Please file this Petition and issue a Cancellation number if appropriate. Enclosed is David B. Palley Client Trust Account Check No. 1229 in the amount of \$300.00 to cover the applicable filing fee. Also enclosed is a self-addressed and stamped postcard. Please acknowledge receipt of these documents by date-stamping the enclosed postcard and returning it to the undersigned.

Thank you for your assistance.

Very truly yours,

PALLEY & PALLEY


David B. Palley

DBP:cfh

Enclosures

cc: Client w/encls.