

**UNITED STATES PATENT AND TRADEMARK
OFFICE**

Trademark Trial and Appeal Board

2900 Crystal Drive

Arlington, Virginia 22202-3513

Mailed: December 6, 2002

Kelzer; Pauline J.

6241 Riverside Blvd. #125
Sacramento, CA 95831

Cancellation No. 92041235

Reg. No. 1275045

David B. Palley
Palley & Palley
103 Providence Mine Road, Suite 204
Nevada City, CA 95959

Roy E. Grabenauer

V.

Kelzer; Pauline J.

Tamika Whitsey, Legal Assistant:

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as

well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open: **December 26, 2002**

Discovery period to close: **June 24, 2003**

30-day testimony period for party
in position of plaintiff to close: **September 22, 2003**

30-day testimony period for party
in position of defendant to close: **November 21, 2003**

15-day rebuttal testimony period
for plaintiff to close: **January 05, 2004**

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "*Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board*," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

TTAB

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

Attorney for Petitioner,
Roy E. Grabenauer

09-03-2002

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

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 BOARD
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.

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

Date of Deposit: 08-29, 2002


Carmella F. Hansen



PALLEY & PALLEY
ATTORNEYS AT LAW

Grabenausier/tm/ROYAK/Intl CI 12

August 28, 2002

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

09-03-2002

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

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

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

Dear Sir/Madam:

Enclosed please find Petition to Cancel on behalf of Petitioner, Roy E. Grabenausier. 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.