

CATERPILLAR and the design marks **CATERPILLAR** and **CAT** (hereinafter collectively the "Caterpillar Marks") in commerce in connection with these goods and services and has continuously used and is using the Caterpillar Marks in commerce in connection with these goods and services.

3. Petitioner owns valid and subsisting federal trademark registrations for the Caterpillar Marks, including, but not limited to, the following:

MARK	REG. NO.	REG. DATE	DATE OF FIRST USE IN COMMERCE	GOODS / SERVICES
Caterpillar	0,277,417	11/11/30	9/00/1904	Tractors, tractor engines, track links, track shoes, grousers, grease guns, tools and equipment, road construction and maintenance machinery, tools and equipment- namely, graders, scarifiers, plows, logging machinery, tools, and equipment- namely, logging engines, and the parts for all said goods
Caterpillar	0,345,499	4/27/37	9/00/1904	Tractors adapted to be employed in farming operations, road building, mining, logging, earth moving, hauling and for other industrial and agricultural purposes; internal combustion engines adapted for employment as the source of power for self-propelled vehicles, and as stationary or portable power units for industrial and agricultural uses; power and manually controlled graders, terracers, planers, scarifiers, leaning wheel graders, elevating graders, scrapers, bulldozers, levelers, plows, ditchers, bank cutters, and back slopers adapted to be employed for the construction and maintenance of roads, for moving and removing of earth, snow and like materials, for preventing soil erosion and for other industrial and agricultural uses; harvesters, combine harvesters, mowers, push rakes, windrow headers and windrow pick-ups; implement hitches; parts and tools for all of said products and attachments, accessories and equipment associable with all of said products.

MARK	REG. NO.	REG. DATE	DATE OF FIRST USE IN COMMERCE	GOODS / SERVICES
CAT	0,564,272	9/23/52	12/6/48	Dump wagons, wheel tractor-dump-wagon combinations, and structural parts for such products, electric generators and diesel electric (electric) generator sets, and parts furnished with said products, diesel and other internal combustion engines adapted for employment as the source of power for self-propelled vehicles and as stationary or portable power units for industrial, marine and agricultural uses; scraping, carrying and dumping units adapted to be employed for scraping and collecting earth, rock or like materials and transporting and dumping said materials, power and manually controlled graders, scarifiers, scrapers, and rippers adapted to be employed for the construction and maintenance of roads, for moving and removing of earth, rock, snow and like materials, for preventing soil erosion and for other industrial and agricultural uses; tractors for industrial and agricultural purposes; and parts and service tools furnished with said products
CAT	0,770,639	6/2/64	2/17/49	Motor trucks, dump wagons, wheel tractor-dump wagon combinations, wheel tractors, and parts therefor.
CAT	0,778,638	10/13/64	1951	Service, maintenance and repairs of trucks, tractors, engines, earthmoving equipment and control units therefor, generators and agriculture equipment
CAT	0,984,444	5/21/74	1/30/73	Lift trucks, and engines, attachments and parts therefor
CAT (Design)	1,579,437	1/23/90	10/20/88	Maintenance and repair services in the field of internal combustion engines, vehicles and power equipment; namely trucks, tractors, engines, earthmoving equipment, material handling equipment, paving equipment, agricultural equipment, generators, and control units for the aforementioned
Caterpillar (Design)	1,579,438	1/23/90	10/20/88	Maintenance and repair services in the field of internal combustion engines, vehicles and power equipment; namely trucks, tractors, engines, earthmoving equipment, material handling equipment, paving equipment, agricultural equipment, generators, and control units for the aforementioned
CAT (Design)	2,140,606	3/3/98	10/20/88	Machinery for earth moving, earth conditioning and material handling namely, loaders and engines therefor, and parts for vehicle and internal combustion engines; vehicles for earth and material hauling and handling, namely, tractors and engines therefor

MARK	REG. NO.	REG. DATE	DATE OF FIRST USE IN COMMERCE	GOODS / SERVICES
CAT (Design)	2,421,077	1/16/01	10/20/88	Hydraulic excavators; mini hydraulic excavators; wheeled excavators; front shovels; backhoe loaders; skid steer loaders; compact wheel loaders; wheel loaders; integrated toolcarriers; telescopic handlers; track loaders; wheel tractor-scrappers; track-type tractors; wheel dozers; motor graders; soil compactors; cold planers; road reclaimers; asphalt pavers; vibratory compactors; marine engines; industrial engines; diesel generator sets, gas generator sets; demolition machines and scrap material handlers for use therewith namely blades, buckets, crushers, grapplers hammers hydraulic brooms, mobile shears, pallet forks; pulverizers, and rakes; log loaders; combines; pipelayers; mining shovels; waste handling machines; and parts for all the above
Caterpillar (Design)	2,448,848	5/8/01	10/20/1988	hydraulic excavators; mini hydraulic excavators; wheeled excavators; front shovels; backhoe loaders; skid steer loaders; compact wheel loaders; wheel loaders; integrated toolcarriers; telescopic handlers; track loaders; wheel tractor-scrappers; track-type tractors; wheel dozers; motor graders; soil compactors; cold planers; road reclaimers; asphalt pavers; vibratory compactors; marine engines; industrial engines; diesel generator sets; gas generator sets; demolition machines and scrap material handlers for use therewith namely, blades, buckets, crushers, grapples, hammers, hydraulic brooms, mobile shears, pallet forks, pulverizers, and rakes; log loaders; combines; pipelayers; mining shovels; waste handling machines; and parts for all the above

The existence of these valid and subsisting federal trademark registrations is *prima facie* evidence of the ownership and validity of the marks. These registrations also evidence the wide scope of protection to which the Caterpillar Marks are entitled. Moreover, each of the registrations listed above, with the exception of registration numbers 2,140,606; 2,421,077; and 2,448,848, are incontestable pursuant to 15 U.S.C. §1065 (b), and constitute conclusive evidence of Petitioner's exclusive right to use the marks for the goods specified in the registrations pursuant to 15 U.S.C. §§1065 and 1115(b).

4. Since long prior to January 28, 2000, the date Respondent filed its application for Registration No. 2,684,138, Petitioner has enjoyed substantial sales of its products and services under its Caterpillar Marks and has spent substantial sums in advertising and promoting the products and services sold under the Caterpillar Marks throughout the United States.

5. In addition to their inherent distinctiveness, and as a result of Petitioner's long and extensive use and marketing efforts, substantial sales and the resulting success of its products and services, and long prior to January 28, 2000, the date Respondent filed its application for Registration No. 2,684,138, Petitioner's Caterpillar Marks became extremely well-known to consumers, acquired a strong secondary meaning signifying Petitioner and its products, and came to represent a most valuable goodwill owned by Petitioner.

6. Long prior to January 28, 2000, the date Respondent filed its application for Registration No. 2,684,138, as a result of the high degree of inherent and acquired distinctiveness due to Petitioner's long and extensive use, marketing efforts, substantial sales and the resulting success of its products and services, the Caterpillar Marks became famous.

7. On February 4, 2003, Registration No. 2,684,138 issued to Respondent for the mark PAVERCAT for use in connection with "machines or machine parts used to aid in the installation of segmental pavers."

8. Upon information and belief, neither Respondent nor any predecessor or related company of Respondent made commercial use of the trademark PAVERCAT for the goods identified in Registration No. 2,684,138 prior to January 28, 2000, the date Respondent filed its application for Registration No. 2,684,138.

9. Respondent's use of the trademark PAVERCAT is without Petitioner's consent or permission.

10. Respondent's use of the trademark PAVERCAT for the goods identified in Registration No. 2,684,138 is likely to cause confusion, mistake or deception as to the source of origin, sponsorship or approval of Respondent's products in that purchasers are likely to believe that Respondent's products are Petitioner's products, or are in some way legitimately connected with, licensed or approved by Petitioner.

11. The registration of the trademark PAVERCAT is and will continue to be damaging to the Petitioner.

WHEREFORE, registration by Respondent of the aforesaid trademark for the aforesaid goods is damaging to Petitioner and Petitioner prays for cancellation of Registration No. 2,684,138.

Petitioner herein submits the requisite fee of \$300.00. Please debit any deficiency from or credit any overpayment to Account No. 16-0650.

Please address all correspondence to Mary E. Innis, Pattishall, McAuliffe, Newbury, Hilliard & Geraldson, 311 S. Wacker Drive, Suite 5000, Chicago, Illinois 60606.

Respectfully submitted,

Dated: February 25, 2003

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON

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February 25, 2003

VIA EXPRESS MAIL

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

02-25-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #70

**Re: Caterpillar Inc. v. Pave Tech, Inc.
(Reg. No. 2,684,138)**

Dear Madam:

Enclosed please find:

1. An original and two copies of a Petition for Cancellation for the above mark;
2. A check covering the requisite filing fee of \$300; and
3. A stamped, self-addressed postcard, which we request be stamped with the date of receipt and returned to us.

Please debit any deficiency from or credit any overpayment to Account No.

16-0650.

Cordially,



Nerissa Coyle McGinn

NCM:lp
Enclosures

02-25-2003

DD