

TTAB

TRADEMARK

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

Ecotherm Inc., )  
)  
)  
)  
Petitioner )  
v. )  
)  
Uhr Corporation, )  
)  
)  
Registrant. )  
\_\_\_\_\_ )

Cancellation No. \_\_\_\_\_  
Reg. No.: 1,517,127  
Mark: MAX  
Registered: December 20, 1988

04-14-2003  
U.S. Patent & TMO/c/TM Mail Ropt Dt. #74

PETITION OF CANCELLATION

Ecotherm Inc., a corporation duly organized and existing under the laws of Canada, having its principal place of business at 588 Edward Avenue, Unit 39, Richmond Hill, Ontario, L4C 9Y6, Canada, believes that it is damaged by the registration of the mark shown in Registration No. 1,517,127 issued December 20, 1988, the owner of record is Uhr Corporation, having a principal place of business in Alexandria, Virginia, U.S.A., and hereby petitions for cancellation of said registration of the mark. The grounds for cancellation are as follows:

1. Registrant has obtained under the provisions of the Trademark Act of 1946, as amended, registration on the Principal Register of the trademark MAX for computer controlled heat pump heating and air conditioning systems in Class 11.

2. Petitioner is an organization in the business of installation, repair and maintenance of heating, air conditioning and refrigeration equipment. Petitioner also offers for sale heating, air conditioning and refrigeration equipment and is a party interested in the use of the term ACMAX for its goods in Class 11 and services in Class 37.

3. Petitioner has filed Application Serial No. 76/254,587 for the mark ACMAX and the registration of Registrant stands in the way of such filing made by Petitioner. Petitioner's application has been rejected under Section 2(d) of the act based on Registration No. 1,517,127.

4. On information and belief, Registrant has made no use of the mark MAX for at least the last three years preceding the filing of this Petition.

5. On information and belief, Registrant does not presently possess a bona fide intention to use the mark MAX in commerce.

6. Registrant has abandoned the mark MAX, and any rights it once may have had to use the mark.

7. As an interested party who would like to make use of the mark ACMAX, Petitioner is damaged by registration of the MAX mark by Registrant when Registrant has previously abandoned its intent to use the mark, has abandoned use of the mark, and has made no actual use of the mark for some time.

WHEREFORE, Petitioner asks that its Petition for Cancellation be sustained and that registration of the term MAX for the services set forth therein be canceled.

Please direct all correspondence to the law firm of MERCHANT & GOULD P.C., PO Box 2910, Minneapolis, MN 55402, Attention: Kristina M. Foudray.

The Petitioner herein appoints John L. Beard, Reg. No. 27,612; John A. Clifford, Reg. No. 30,247; Charles E. Golla, Reg. No. 26,896; John D. Gould, Reg. No. 18,223; Curtis B. Hamre, Reg. No. 29,165; Scott W. Johnston, Reg. No. 39,721; D. Randall King; Paul A. Welter, Reg. No. 20,890; Kristina Foudray, Gregory Golla, Allen Hinderaker of the firm Merchant &

Gould and its attorneys to transact all business in the U.S. Patent and Trademark Office related to this matter with full power of substitution.

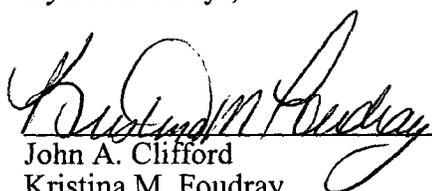
Accompanying the duplicate signed copies of this Petition for Cancellation is the required fee of \$300.00. Please charge any excess fees or credit any overpayment to the Deposit Account No. 13-2725 of Petitioner's counsel noted below.

Respectfully submitted,

ECOTHERM INC.

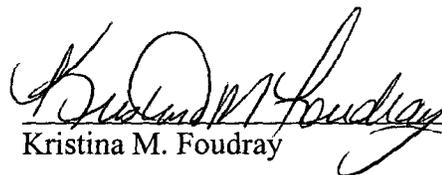
By its Attorneys,

Dated: April 8, 2003

  
John A. Clifford  
Kristina M. Foudray  
MERCHANT & GOULD P.C.  
PO Box 2910  
Minneapolis, Minnesota 55402  
(612) 332-5300

CERTIFICATE OF MAILING

The undersigned hereby certifies that this paper, as described hereinabove, is being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Assistant Commissioner for Trademarks, Box TTAB, 2900 Crystal Drive, Arlington, VA 22202-3513 this 8<sup>th</sup> day of April, 2003.

  
Kristina M. Foudray