

09-11-2003
U.S. Patent & TMOtc/TM Mail Rcpt Dt. #58

**UNITED STATES PATENT AND TRADEMARK
OFFICE**

Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: August 22, 2003

Craddock-Terry, Inc.
3100 Albert Lankford Drive
Lynchburg, VA 24506

Cancellation No. 92042333
Reg. No. 64588

I. Morley Drucker, Esq.
Fulwider, Patton, Lee & Utecht, LLP
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045

Malcolm & Co. LLC

V.

Craddock-Terry, Inc.

Juan M. Porter, 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

Cancellation No. 920 42,333

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: **September 11, 2003**

Discovery period to close: **March 09, 2004**

30-day testimony period for party
in position of plaintiff to close: **June 07, 2004**

30-day testimony period for party
in position of defendant to close: **August 06, 2004**

15-day rebuttal testimony period
for plaintiff to close: **September 20, 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.

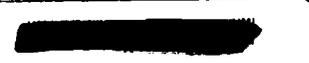
NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark 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.

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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

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



08-01-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Malcolm & Co. LLC

Petitioner,

v.

Craddock-Terry, Inc.,

Applicant.

Cancellation No.:

Registration No.: 64,588

Date of Issue: August 13, 1907

Box TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

08-01-2003 18:09:32

PETITION FOR CANCELLATION

Dear Sir:

Malcolm & Co. LLC, a New York corporation, located and doing business at 1412 Broadway, Suite 2300, New York, New York 10018, believes that it will be damaged by Registration No. 64,588 and hereby Petitions to Cancel same.

A description of Registrant's Registration No. 64,588 follows: said registration was registered on the Principal Register, by Craddock-Terry Shoe Corp., on August 13, 1907 for the mark AUTOGRAPH, in class 25, for leather boots and shoes, claiming a first use in 1900.

As grounds of this Petition, it is alleged that:

1. Petitioner has filed Application No. 78/280,192, for AUTOGRAPH on or about

July 29, 2003.

08/13/2003 EPIMR1 00000043 0064588

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20439.1

300.00 OP

55/20/2006TTAE

2. Registration No. 64,588 was assigned to Craddock-Terry, Inc. whose last known address is 601 Twelfth Street, P.O. Box 10088, Lynchburg, Virginia 24506.

3. On information and belief, Craddock-Terry, Inc. has abandoned said mark in commerce within the meaning of 15 U.S.C. 1127.

4. Petitioner is likely to be damaged by continuance of said registration in that Petitioner's ability to register the mark of its pending trademark application, Serial No. 78/280,192, and Petitioner's right to continued and legal use of its mark will be impaired by the continued registration of said Registration No. 64,588.

WHEREFORE, Petitioner prays that Registration No. 64,588, be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

LAST KNOWN ADDRESS FOR SERVICE

On information and belief, the last known owner of the mark, Craddock-Terry, Inc. filed a voluntary petition in bankruptcy under Chapter 11 on August 26, 1997. Craddock-Terry, Inc. continued to operate its business as Debtor-in-Possession until the bankruptcy was closed on May 7, 2003; the address for Craddock-Terry, Inc. was listed as:

601 Twelfth Street
P. O. Box 10088
Lynchburg, Virginia 24506

Its attorney was listed as :

W. Alan Smith Jr., Esq.
P. O. Box 957
Lynchburg, Virginia 24505
Phone: (434) 528-1058

Attached, also, as Exhibit A hereto is a document entitled "Bankruptcy Full Case Summary" for Craddock-Terry, Inc. which lists the last known addresses for Craddock-Terry, Inc. and its attorney, W. Alan Smith. This information is enclosed for the purpose of most effectively serving the present owner of Registration No. 64,588 with the instant Petition for Cancellation.

Petitioner hereby appoints FULWIDER PATTON LEE & UTECHT, LLP, a law firm including I. Morley Drucker, Esq., Michael S. Elkind, Esq.; both members of the bar of the State of California, to act as attorneys for Petitioner herein, with full power to prosecute said Petition, to transact all relevant business with the U.S. Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this Petition for Cancellation.

Enclosed is our check in the amount of \$300.00 as the filing fee. The Commissioner is authorized to charge any additional fees to Deposit Account No. 06-2425.

Respectfully submitted,

MALCOLM & CO., LLC

Dated: July 29, 2003 By:



I. Morley Drucker
Michael S. Elkind
Attorneys for Petitioner
FULWIDER PATTON LEE & UTECHT, LLP

IMD:gkm

Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045
Telephone: (310) 824-5555
Facsimile: (310) 824-9696
Email: mdrucker@fulpat.com

CERTIFICATE OF MAILING UNDER 37C.F.R. §1.8

I hereby certify that this correspondence is being deposited with the United States Postal Services with sufficient postage as First Class Mail in an envelope addressed to:

Box TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

Dated: 7/29/03

By: Gayle K. Makishi
Gayle K. Makishi

Bankruptcy Full Case Summary

6 97-02624 (Lynchburg)

CRADDOCK-TERRY, INC.

Office: Lynchburg	County: Lynchburg
Judge: WILLIAM E. ANDERSON	
Trustee: DEBTOR-IN-POSSESSION	
Case Information	
Filed: 06/25/02 Chapter: 11 Reopened #: 1	Original filing date: 08/26/97 Original chapter: 11
Voluntary: Yes Case type: Corporation Assets: Yes	Business: Yes Joint: No Pro se: No
Bar Dates and Case Status	
Complaints bar date: Not Applicable	Claims bar date: 12/22/97
Status: Chapter 11 Confirmed Status date: 05/07/03	Disposition: Discharge not applicable Discharged:
Closing date: 05/07/03	
Parties	
Debtor: CRADDOCK-TERRY, INC. SSN: - - EIN: 54-1454851 Atty: W. ALAN SMITH, JR.; LYNCHBURG (434) 528-1058	

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Attorney Listing
6 97-02624 (Lynchburg) Bankruptcy

CRADDOCK-TERRY, INC.

	TRUSTEE DEBTOR-IN-POSSESSION
ATTORNEY: W. ALAN SMITH, JR. P. O. BOX 957 LYNCHBURG, VA 24505 (434) 528-1058	DEBTOR: CRADDOCK-TERRY, INC. 601 TWELFTH STREET, PO BOX 10088 LYNCHBURG, VA 24506 SSN: - - EIN: 54-1454851

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Description:	Attorneys	Case Number:	6 1997-02624
Billable Pages:	1	Cost:	0.07



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92042333
CRADDOCK-TERRY, INC.
3100 ALBERT LANKFORD DRIVE
LYNCHBURG, VA 24506

