

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

In the Matter of Registration No. 1,533,233
Issued on April 4, 1989

SAXIFON USA, INC., a California Corporation,
Petitioner,
v.
IDD SA, a Swiss Corporation,
Registrant

CANCELLATION NO.:



03-08-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #78

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

PETITION FOR CANCELLATION

Petitioner, SAXIFON USA, INC. ("Petitioner"), a California Corporation, located at 1420 B Los Angeles Street, Los Angeles, California, 90015, believes that it is being damaged by Registration No. 1,533,233 and hereby petitions to cancel same on the following grounds:

1. Upon information and belief, Registrant, IDD SA ("Registrant"), a corporation organized and existing under the laws of Switzerland, and doing business at 12 Rue Klebert, Geneva, Switzerland, is the owner of United States Trademark Registration No. 1,533,233 for SAXOPHONE for use in connection with "men's clothing, namely, pants, coats, jackets and suits" in International Class 25.

2. Petitioner is the owner of common law trademark rights for SAXIFON for clothing and shoes, and currently has an application pending at the United States Patent and Trademark Office, Serial No. 78/192152 for SAXIFON in International Class 25 for use in connection with "apparel, namely shirts, pants, jackets, suits, outerwear, shorts, and shoes." Petitioner hereby gives notice that, in accordance with Trademark Rule 2.122(d), it will rely on said application as evidence on its behalf in this proceeding, and status copies thereof will be introduced into evidence during Petitioner's testimony period.

3. Petitioner's SAXIFON trademark is inherently distinctive as used in connection with its goods.

4. Petitioner's SAXIFON trademark has been used continuously in connection with its clothing products since at least as early as January, 1998. As a result of Petitioner's widespread use of its trademark in connection with clothing products, Petitioner's

SAXIFON trademark has acquired great distinctiveness and extensive goodwill, and is well known and recognized by consumers and the trade as identifying Petitioner's goods.

5. Upon information and belief, Registrant has abandoned the registered mark SAXOPHONE in that it has discontinued use of the mark with intent not to resume such use.

6. If the Registrant is permitted to continue to maintain its invalid SAXIPHONE registration, it casts a cloud upon Petitioner's own right to continue to use, develop and to expand the use of its SAXIFON trademark in the United States. Such registration is thus a source of damage and injury to the Petitioner.

7. A duplicate copy of this Petition and the fee required in §2.6(a)(16) is enclosed herewith.

WHEREFORE, Petitioner believes that it will be damaged by Registration No. 1,533,233 and prays that this Petition for Cancellation be sustained in favor of Petitioner, that judgment be entered against Registrant and that U.S. Trademark Registration No. 1,533,233 be canceled.

DATED: March 3, 2004

HIGGS, FLETCHER & MACK LLP

By: 

CHARLES F. REIDELBACH, JR., ESQ.

MICHAEL J. HOISINGTON, ESQ.

Attorneys for Petitioner

SAXIFON USA, INC.

COPY

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HIGGS, FLETCHER & MACK LLP

By: 
CHARLES F. REIDELBACH, JR., ESQ.
MICHAEL J. HOISINGTON, ESQ.
Attorneys for Petitioner
SAXIFON USA, INC.

TTAB

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

Attorney Docket No.: 101572-29609

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



03-08-2004

U.S. Patent & TMOfr/TM Mail Rcpt Dt. #78

TRADEMARK TRANSMITTAL LETTER

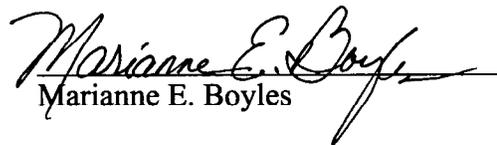
Transmitted herewith for consideration by the Commissioner on behalf of:

SUBMITTED HEREWITH:

- Trademark / Service Mark Application (PTO Form 1478)
- Power of Attorney (PTO-FB-TM 150)
- Drawing Page
- Amendment Under 37 C.F.R. § 2.62
- Declaration Under 37 C.F.R. § 2.20
- Statement of Use (PTO Form 1580)
- Request for Extension of Statement of Use (PTO Form 1581)
- Affidavit of a Mark Under Section 8 (PTO Form 1583)
- Application for Renewal of a Mark (PTO-FB-TM 201)
- Affidavit for Publication under Section 12(c) (PTO Form 4.14a)
- Affidavit of Incontestability under Section 15 (PTO-FB-207)

CERTIFICATION UNDER 37 CFR § 1.8(a)

I hereby certify that this Trademark Transmittal and the documents referred to as enclosed therein are being deposited with the United States Postal Service as first class mail with sufficient prepaid postage and addressed to: BOX TTAB, NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia, 22202-3513, this 3rd day of March 2004.


Marianne E. Boyles

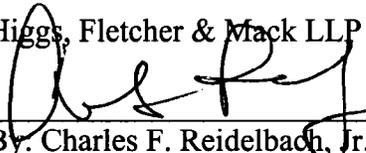
- Combined Affidavit for Publication and Incontestability (PT-FB-TM 209)
- Opposition to the Registration of a Mark (PTO-FB-TM 300)
- Petition to Cancel Registration of a Mark (PTO-FB-TM 301)
- Ex Parte Appeal from Examiner of Trademarks to Trademark (PTO-FB-TM 302)
- Cover Sheet, Recordation of Trademark Assignment (PTO Form 1594)
- Other: PETITION FOR CANCELLATION
- Payment of Filing Fees
 - Please charge our deposit order account no. 501760 in the amount of \$300.
A duplicate copy of this transmittal is enclosed.
 - A firm check, no. ____, in the amount of \$__ is enclosed
 - A cashiers check/money order in the amount of \$__ is enclosed. Issuing Institution:

This transmittal letter ends with this page.

DATED this 3rd day of March 2004.

Respectfully submitted,

Higgs, Fletcher & Mack LLP


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