

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

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DEBONAIR TRADING INTERNACIONAL LDA., :
Petitioner, :
vs. : Cancellation No.
ISEHAN COMPANY LIMITED CORPORATION, :
Respondent. :

To: The Honorable Commissioner of Trademarks



MADAM:

05-05-2004

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

PETITION FOR CANCELLATION

In the matter of Registration No. 1,956,660, dated October 26, 1982, DEBONAIR TRADING INTERNACIONAL LDA., a corporation organized and existing under the laws of Portugal, located and doing business at Avenida do Infante 50 9000, Funchal, Madeira, Portugal, believes that it is and will be damaged by said registration and hereby petitions to cancel same.

As grounds therefor, it is alleged that:

1. Petitioner is the owner of the trademark SO. . ? KISS ME, and has applied to register said mark on the Principal Register of the United States Patent and Trademark Office for perfumes and perfumed body spray;

deodorants; eau de toilette; fragrance sachets; body lotion; shower gel and shimmer lotions in Class 3. The basis for the application is Section 1(b) of the Trademark Act, and it was filed on March 18, 2003 and assigned Application S.N. 78/227,511.

2. Registration of Petitioner's Application S.N. 78/227,511 was refused in an Office Action mailed on September 4, 2003 on the ground that the mark that is the subject of said Application is confusingly similar to the mark KISS ME that is the subject of the Registration herein sought to be cancelled.

3. The goods for which coverage is claimed in Respondent's Registration are lipsticks, rouges, lip creams, lip liners, cream compacts, foundation cream, foundation powders, make-up cake, eye shadow, eyebrow pencils, false eyelashes, mascara, manicuring enamels, perfumes, hand creams, washing creams, nourishing creams, cleansing creams, skin lotions, milky lotions and astringents in Class 3.

4. Upon information and belief, Respondent has never used the mark KISS ME in commerce in or with the United States for any goods apart from Mascara and Eyeliner.

5. On May 3, 1988 Respondent filed in the Office a combined Declaration under Sections 8 and 15 of the Trademark Act in connection with registration No. 1,213,737. Upon information and belief, said declaration willfully and falsely stated that the mark KISS ME was, as of May 3, 1988, still in use by Registrant on all of the goods described in the Registration herein sought to be cancelled.

6. Wherefore, Registration No.1,213,737 of the KISS ME mark was falsely and fraudulently maintained by Registrant in violation of 15 U.S.C. Sec.1064(3).

7. On October 3, 2002 Respondent filed in the Office a Combined Declaration under Sections 8 (10 year) and 9 of the Trademark Act. Upon information and belief, said Declaration willfully and falsely stated that the mark KISS ME was, as of October 3rd, 2002, still in use by Registrant on all of the goods described in the Registration herein sought to be cancelled.

8. Wherefore, Registration no. 1,213,737 of the mark KISS ME was falsely and fraudulently renewed by Registrant in violation of 15 U.S.C. Sec. 1064(3).

9. Petitioner is damaged by Respondent's aforesaid

CERTIFICATE OF FILING

I hereby certify that the foregoing PETITION FOR CANCELLATION was filed by placing the same in an envelope, sufficient First Class postage affixed, addressed to Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, and by depositing same with the U.S. Postal Service, on this 1st day of March, 2004.

A handwritten signature in cursive script, appearing to read "J. A. Keane", is written over a horizontal line.

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