

ESTTA Tracking number: **ESTTA18241**

Filing date: **10/28/2004**

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

### Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

#### Petitioner Information

|                |   |                    |               |
|----------------|---|--------------------|---------------|
| <b>Name</b>    | Ms.NoraOrozco   |                    |               |
| <b>Entity</b>  | Individual  | <b>Citizenship</b> | UNITED STATES |
| <b>Address</b> | 4690 A Carpinteria Ave.<br>Carpinteria, CA 93013<br>UNITED STATES |                    |               |

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| <b>Attorney information</b> | Kurt Koenig<br>Koenig & Associates<br>220 East Figueroa St.<br>Santa Barbara, CA 93101<br>UNITED STATES<br>Kurt@incip.com Phone:805-965-4400 |  |  |
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#### Registration Subject to Cancellation

|   |   |                          |            |
|---|---|--------------------------|------------|
| <b>Registration No</b>                        | 2846833   | <b>Registration date</b> | 05/25/2004 |
| <b>Registrant</b>                             | Hwang, Michael<br>12-25 Robin Lane<br>Bayside, NY 11360<br>UNITED STATES                    |                          |            |
| <b>Goods/Services Subject to Cancellation</b> | Class 025. First Use: 20031220, First Use In Commerce: 20031220<br>Goods/Services: Footwear |                          |            |

|                    |                                  |
|--------------------|----------------------------------|
| <b>Attachments</b> | PetitiontoCancel.pdf ( 3 pages ) |
|--------------------|----------------------------------|

|                  |               |
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| <b>Signature</b> | /Kurt Koenig/ |
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| <b>Name</b> | Kurt Koenig |
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|             |            |
|-------------|------------|
| <b>Date</b> | 10/28/2004 |
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of  
Registration No.: 2,846,833  
For the mark: OAKTREE & Design  
Date registered: May 25, 2004

|                               |   |                   |
|-------------------------------|---|-------------------|
| Roger Orozco and Nora Orozco, | ) |                   |
|                               | ) |                   |
| Petitioner,                   | ) |                   |
|                               | ) |                   |
| v.                            | ) | Cancellation No.: |
|                               | ) |                   |
| Michael Hwang                 | ) |                   |
|                               | ) |                   |
| Respondent.                   | ) |                   |
|                               | ) |                   |

**PETITION FOR CANCELLATION**

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

Roger Orozco and Nora Orozco ("Petitioner") believe they are or will be damaged by the continued registration of the mark identified in Registration No. 2,846,833 and hereby petitions the Trademark Trial and Appeal Board ("Board") to cancel the same pursuant to Section 18 of the Lanham Act (15 U.S.C. § 1068) as amended by the Trademark Revision Act of 1988. As grounds for this Petition, it is alleged that:

1. Petitioner's are individuals having a principal place of business at 4180 Via Real, Suite D, Carpinteria, California 93013.

2. Upon information and belief, Respondent, Michael Hwang ("Respondent"), is an individual of the State of New York, having an address of 12-25 Robin Lane, Bayside, NY 11360.

3. Respondent is the owner of Registration No. 2,846,833 for the mark OAKTREE & Design in International Class 25 for use in association with "footwear," which was registered by the U.S. Patent and Trademark Office on May 25, 2004. On information and belief, Respondent's first use of OAKTREE in commerce was no earlier than December 20, 2003.

4. Petitioner, for many years and long prior to any date of first use upon which Applicant can rely, has continuously manufactured, sold, distributed, and advertised in interstate commerce in conjunction with the mark OAK TREE FARMS and other related marks, various goods and services in a multitude of classes. Petitioner is the owner of Application Serial No. 78/304,288 for "footwear" in International Class 25.

5. Petitioner, for many years and long prior to any date of first use upon which Applicant can rely and at least as early as April 1, 1995, used the trademark OAK TREE FARMS, as well as composite marks bearing the words OAK TREE FARMS and a depiction of a leaf design, in connection with the sale of footwear.

6. Petitioner's OAK TREE FARMS Mark is inherently distinctive or, in the alternative and prior to Respondent's first use, has acquired secondary meaning as an indicator of source for Petitioner's goods from Petitioner's considerable effort and expense in promoting the trademarks and the goods sold under such mark. The purchasing public has come to know, rely upon, and recognize the products of Petitioner by its OAK TREE FARMS Mark.

7. Petitioner has been and will continue to be damaged by the existence of Registration No. 2,846,833 in that the registration obtained by Respondent confers a prima facie exclusive right to use in commerce the mark OAKTREE on goods similar to those of Petitioner despite Petitioner's prior and continuous use of the mark OAK TREE FARMS. Purchasers of goods of the Respondent sold under the mark OAKTREE are likely to be confused into believing that such goods emanate from, are sponsored by, are endorsed by, or are otherwise affiliated with Petitioner.

WHEREFORE, Petitioner prays this Petition for Cancellation be sustained in favor of Petitioner and Registration No. 2,846,833 be canceled.

This Petition for Cancellation is being filed in duplicate along with a check in the amount of \$300 as required by 37 C.F.R. §2.6(a)(16) to cover the applicable filing fee to cancel Respondent's registration.

Respectfully submitted,

Dated: October 27, 2004

By:

  
Kurt Koenig  
Laurel G. Phillips  
Attorneys for Petitioner  
KOENIG & ASSOCIATES  
220 East Figueroa Street  
Santa Barbara, CA 93101  
TEL: 805-965-4400  
FAX: 805-564-8262

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted by electronic mail to the United States Patent and Trademark Office on the date shown below.

  
KURT KOENIG \_\_\_\_\_ Dated: October 27, 2004

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