

ESTTA Tracking number: **ESTTA46481**

Filing date: **09/28/2005**

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

Name	LESCO Technologies, LLC		
Entity	Limited liability company	Citizenship	Nevada
Address	1301 East Ninth Street Suite 1300 Cleveland, OH 44114-1849 UNITED STATES		

Attorney information	Raymond Rundelli Calfee, Halter & Griswold LLP 800 Superior Avenue Suite 1400 Cleveland, OH 44114-2688 UNITED STATES ipdocket@calfee.com, rrundelli@calfee.com Phone: 216.622.8854
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Registration Subject to Cancellation

Registration No	2495312	Registration date	10/09/2001
Registrant	MARKET PROMOTIONS, L.P. 3116 Treeline Drive Murrysville, PA 15668 UNITED STATES		
Goods/Services Subject to Cancellation	Class 001. First Use: 19990920, First Use In Commerce: 19990920 Goods/Services: liquid de-icing composition that prevents ice from forming on windows		

Attachments	ICEBLOCKERPetition.pdf (5 pages)
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Signature	/Raymond Rundelli/
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Name	Raymond Rundelli
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Date	09/28/2005
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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.: 2,495,312
For the Mark: ICE BLOCKER
Date of Issue: October 9, 2001

LESCO TECHNOLOGIES, LLC,)	
)	
Petitioner,)	Cancellation No.:
)	
v.)	
)	
MARKET PROMOTIONS, L.P.,)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Petitioner, LESCO Technologies, LLC, is a Nevada limited liability company with its principal place of business at 1301 East Ninth Street, Suite 1300, Cleveland, Ohio 44114-1849. Petitioner believes that it is being, has been and will be damaged by the continued existence of the above-referenced registration on the Principal Register, and hereby petitions for the cancellation of that registration.

The grounds for cancellation are alleged as follows:

1. Market Promotions, L.P. (“MPLP”), is the record owner of U.S. Trademark Registration No. 2,495,312 (the “’312 Registration”) for the mark ICE BLOCKER, which is registered on the Principal Register in International Class 001 for “liquid de-icing composition that prevents ice from forming on windows.” The ‘312 Registration issued on October 9, 2001, and is based on a claimed first use in commerce in September 1999.

2. Petitioner is the owner of the currently pending U.S. Trademark Application No. 78/500,343 (the “’343 Application”) for the mark ICE BLOCK, which requests registration of the mark in the International Class 001 for “de-icing preparations for industrial, commercial and domestic use on roads, driveways, paths, sidewalks and parking areas.” The ‘312 Registration has been cited by the Examining Attorney to whom the ‘343 Application has been assigned for processing as the sole basis for an initial Section 2(d) refusal of the ‘343 Application.

3. A search of the Internet reveals that at one time a product matching the goods described in the ‘312 Registration was marketed under the mark ICE BLOCKER. This search also reveals that the ICE BLOCKER product was the subject of a web-site having a URL of <www.icebreaker.com>. Evidence of the existence of this site can be found on the internet archive known as the “Wayback Machine” (<www.archive.org>). This site described the ICE BLOCKER product as being “a product of” Pitt Penn Oil Co. (“Pitt Penn”) and the material on the site bears a copyright notice of 1999 under the name “Pitt Penn Oil Co.” On information and belief, this site was operated by or on behalf of Pitt Penn. This site makes its first archived appearance in the Wayback Machine archive on or about December 4, 2000. The last archived version of the site is dated February 17, 2003. An e-mail inquiry recently sent to the “e-mail” contact address for <www.iceblocker.com> as it appears in an internet archive as of February 17, 2003 returned the following message:

“Your message did not reach some or all of the intended recipients.

*Subject: Product Availability
Sent: 9/26/2005 2:19 PM*

The following recipient(s) could not be reached:

'info@iceblocker.com' on 9/26/2005 2:19 PM

The destination server for this recipient could not be found in Domain Name Service (DNS). Please verify the email address and retry. If that fails, contact your administrator.

(Emphasis added.)

4. After February 17, 2003, the next archived version of the site located at the URL <www.iceblocker.com.> that appears in the Wayback Machine is dated April 7, 2004, and it makes no mention of the ICE BLOCKER product or any other product of Pitt Penn. Instead, the various versions of the site archived between April 7, 2004 and June 12, 2004 contained the following information on the home page:

Welcome to Iceblocker. Iceblocker is an online resource that helps shoppers find discounts, special offers and promotional items from top online merchants. To put it simply Iceblocker is the place where the best deals on the Internet are brought to you! If there is a free or a discounted product or a chance to win cash or hot deals, Iceblocker notifies you of the same. Try us out.

On information and belief, this iteration of the site located at the URL <www.iceblocker.com> s archived on the Wayback Machine was not owned or operated by Pitt Penn or any other entity associated with or related to MPLP.

5. On information and belief, the URL <www.iceblocker.com> is not currently in use and is available to the public at large for registration.

6. On information and belief, a licensor/licensee or some other “related company” relationship once existed between MPLP and Pitt Penn pursuant to which Pitt Penn marketed the ICE BLOCKER product described on the now defunct web-site operated by Pitt Penn having the URL <www.iceblocker.com>.

7. Pitt Penn currently operates and has for some time operated a web-site located at the URL <ww.pittpenn.com>. A search of the Wayback Machine internet archive reveals that as early as March 2, 2000 this site made reference to the same ICE BLOCKER product that was the subject of the web-site located at <www.iceblocker.com> as archived between December 4, 2000 and February 17, 2003. The product is described in March 2000 as a “new” product of Pitt Penn on the March 2, 2000 archived version of the site and there was a link on the site to the <www.iceblocker.com> site. However, by the end of March 2004, the Pitt Penn site no longer made any reference to the ICE BLOCKER product.

8. A recent telephone inquiry to the customer service department of Pitt Penn concerning the availability of the ICE BLOCKER product was responded to with a statement by a person believed to be a customer service representative that the ICE BLOCKER product is no longer available and is no longer being made by Pitt Penn.

9. The current version of the Pitt Penn web-site makes no reference to the ICE BLOCKER product.

10. A general search of the internet through several different search engines reveals no references to the current availability of the ICE BLOCKER product formerly marketed by Pitt Penn.

11. On information and belief, the mark ICE BLOCKER is no longer in use by or on behalf of MPLP or on in connection with the goods described in the ‘312 Registration.

12. On information and belief, use of the mark ICE BLOCKER by or on behalf of MPLP was discontinued on or in connection with the goods identified in the ‘312 Registration with an intent not to resume use.

13. On information and belief, the mark ICE BLOCKER has been abandoned by MPLP and the '312 Registration is subject to cancellation pursuant to 15 U.S.C. § 1064(3).

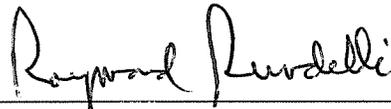
14. The continued existence of the '312 Registration despite MPLP's abandonment of the mark ICE BLOCKER casts a cloud on Petitioner's own right to use and develop the trade designation ICE BLOCK as a mark in the United States, and, as such is and would continue to be a source of damage and injury to Petitioner.

15. The continued existence of the '312 Registration despite MPLP's abandonment of the mark ICE BLOCKER may prevent Petitioner from obtaining a registration for the mark ICE BLOCK, and, as such is likely to be a source of injury to Petitioner.

WHEREFORE, Petitioner believes that it has been and will be damaged by the '312 Registration and prays that it be cancelled and that this Petition for Cancellation be granted.

This Petition for Cancellation is submitted, along with the required filing fee of \$300.00.

Respectfully submitted,



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