

ESTTA Tracking number: **ESTTA52380**

Filing date: **11/08/2005**

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	JamesAFrost		
Entity	Individual	Citizenship	UNITED STATES
Address	6861 Mountain View Rd. Ooltewah, TN 37262 UNITED STATES		

Attorney information	Susan B. Flohr Blank Rome LLP 600 New Hampshire Ave., NW Washington, DC 20037 UNITED STATES flohr@blankrome.com, trademarks@blankrome.com Phone:202 772 5870		
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Registration Subject to Cancellation

Registration No	2789847	Registration date	12/02/2003
Registrant	Ginkgo International, Ltd. 5107 Chase Street Downers Grove, IL 60515 UNITED STATES		
Goods/Services Subject to Cancellation	Class 008. First Use: 20030630, First Use In Commerce: 20030630 Goods/Services: Table flatware, namely, knives, forks, and spoons		

Attachments	patriot petition.pdf (3 pages)
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Signature	/sbf/
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Name	Susan B. Flohr
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Date	11/08/2005
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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. 2789847
Registrant: Ginkgo International, Ltd.
Mark: PATRIOT
Registered: December 2, 2003

:
JAMES A. FROST, :
:
 Petitioner, :
:
v. : Cancellation No. _____
:
Ginkgo International , Ltd.
, :
:
 Registrant. :

PETITION TO CANCEL

James A. Frost, dba Frost Cutlery, a United States citizen, having his principal place of business at 6861 Mountain View Road, Ooltewah, TN 37363 ("Frost"), believes that he will be damaged by Registration No. 2789847, registered December 2, 2003, for the mark PATRIOT for table flatware, namely knives, forks, and spoons, in class 8, and hereby petitions to cancel the same. The grounds of the petition are as follows:

1. Prior to the date on which Registrant claims to have first used the PATRIOT mark, namely, June 30, 2003, Petitioner adopted and used his PATRIOT TACTICAL I trademark in interstate commerce on and in connection with cutlery, namely pocket and collector's knives ("Petitioner's Goods"). Petitioner has used his PATRIOT TACTICAL I trademark on such goods in commerce since at least as early as December 31, 2002, and continues to use such mark for said goods.
2. Petitioner is the owner of Application S/N 78340751 for the mark PATRIOT TACTICAL I mark, filed December 15, 2003, for Petitioner's Goods.
3. Petitioner's PATRIOT TACTICAL I trademark, by virtue of its long term and substantial use since at least as early as 2002, has acquired great value as an identification of the origin of Petitioner's knives. Through extensive sales and advertising of Petitioner's Goods under the PATRIOT TACTICAL

I trademark, Petitioner has built up, at significant expense and effort, valuable goodwill, which is likely to be injured by the registration obtained by Registrant unless it is cancelled, to Petitioner's irreparable damage.

4. In an action dated May 9, 2005, the examiner assigned to Petitioner's Application S/N 78340751 for its PATRIOT TACTICAL I mark, refused registration thereto under section 2(d) of the Lanham Act on the basis that concurrent use of Petitioner's mark for the goods covered by its pending application and the Registrant's mark for the goods covered by the registration sought to be cancelled, is likely to cause confusion to prospective purchasers.

5. If as the examiner contends the trademark PATRIOT covered by the registration herein sought to be cancelled, so resembles Petitioner's previously used trademark PATRIOT TACTICAL I when applied to the goods of Petitioner to be likely to cause confusion, to cause mistake, or to deceive within the meaning of the Trademark Act of 1946, then Petitioner may be damaged since Reg. No 2789847 will stand as a bar to registration of Petitioner's PATRIOT TACTICAL I mark, and therefore such registration should be cancelled because Petitioner has priority of use.

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained in favor of Petitioner and that Registration No. 2789847 be cancelled.

A check in the amount of \$300 accompanies this petition to cover the petition fee.

Respectfully submitted,

/sbf/

By: _____

Susan B. Flohr
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Date: 11-7-05

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