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

Proceeding	92045710
Party	Plaintiff Auto Acuity, LLC Auto Acuity, LLC 9 South Broadway Box 101 Tarrytown, NY 10591 UNITED STATES
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Signature	/Sophie Cohen/
Date	06/20/2006
Attachments	Auto Acuity reply mot to dis No. 92045710.pdf (17 pages)(1367017 bytes)

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

In the matter of Trademark Registration

Reg. No.: 2729438
Registered: 06/24/2003
By: Linda Rodman
For the Trademark: DUB

Auto Acuity, LLC

Petitioner,

v.

Linda Rodman,

Registrant.

Cancellation No 92045710

PETITIONER'S REPLY TO
MOTION TO DISMISS

Petitioner, Auto Acuity, LLC, hereby replies to Registrant's Motion to Dismiss.

INTRODUCTION

Petitioner has stated and continues to believe that it is harmed by the registration of the generic term "dubs." Petitioner, in its initial Petition to Cancel ("Petition"), never stated—as Registrant alleges—that the Registrant's mark restricted its own registration. Rather, Petitioner is harmed, inter alia, because Registrant is attempting to claim rights in a generic or, at the very least, descriptive term, effectively subjecting Petitioner to liability under Section 43(a) of the Lanham Act for trademark infringement.

A. Petitioner Has Standing to Seek Cancellation of the mark DUBS

In order to plead standing with regard to a claim of genericness or mere descriptiveness, one need only plead that it is entitled to use the term in commerce and is therefore harmed by the exclusive rights claimed by Registrant. See, e.g. *Lipton Industries Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); *Plyboo America v. Smith & Fong*, 51 USPQ2d 1633 (TTAB 1999). See, also, *Jewelers Vigilance Committee, Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021 (Fed. Cir. 1987) (in looking at a question of standing, courts should construe the complaint in favor of the complaining party).

B. Petitioner is Harmed by Registrant's Claim of Exclusive Rights in the Mark DUBS for wheels.

Petitioner is creating a business selling automobile parts, including dubs. The exhibits attached in the original Petition evidence the use of the term dubs generically to describe wheels. The word "dub" or "dubs" commonly and currently means "wheels" or "tires," regardless of its original etymology.

1. Attached hereto as Exhibit A are additional Internet printouts showing the search results for the term "dubs" and "dub wheels" on the Google search engine. The printout clearly shows generic use of the term to describe wheels. None of these results appear to show Registrant's specific goods or services, though all of them appear to sell the same item, namely "wheels."

2. Attached hereto as Exhibit B are additional printouts from other dub sellers evidencing the generic use of dubs to describe automobile wheels. Such evidence suggests that "dubs" is a common and usual word for wheels, and further, that Petitioner and competitors are entitled to use the term in commerce. Petitioner is therefore harmed by the existence of the registration for DUBS for "wheels," which affords it standing in this cancellation proceeding. *Ritchie v. Simpson*, 50 USPQ2d 1023 (Fed. Cir. 1999)

C. Petitioner is Harmed By Registrant's Fraudulently Filed Specimen Evidencing Use.

Registrant should never have received a trademark for the mark DUBS in the first place. As noted above, Petitioner is harmed by such registration. Registrant committed an error with deceptive intent by filing a specimen of use that did not identify Registrant's goods. Attached hereto as Exhibit C is the printout of Registrant's specimen of use, which Registrant knew at the time did not evidence Registrant's mark, but was merely a packing label. Registrant's application would never have been approved for registration had Registrant properly identified the specimen as a packing slip.

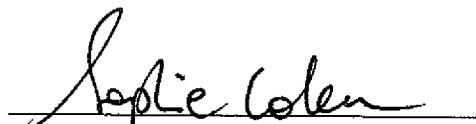
CONCLUSION

GIVEN THE FOREGOING, Petitioner continues to be damaged by the existence of the registration at issue, and therefore maintains standing to as Petitioner. Petitioner requests that Registrant's Motion to Dismiss Petition to Cancel be denied.

Respectfully Submitted,

COBALT LLP

By:



Tsan Abrahamson, Esq.
Sophie Cohen, Esq.
Attorneys for Petitioner

Date: June 20, 2006

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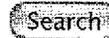
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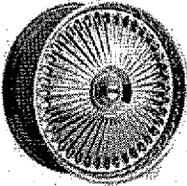
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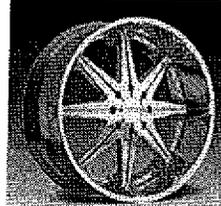
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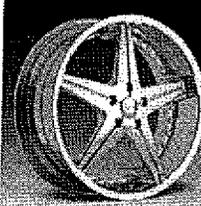
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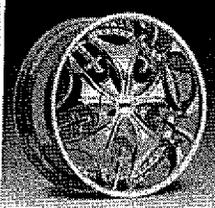
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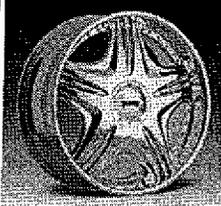
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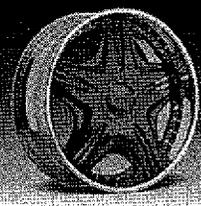
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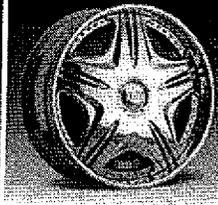
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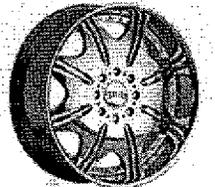
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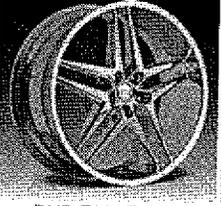
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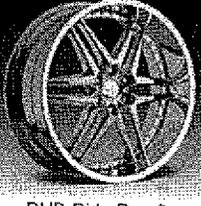
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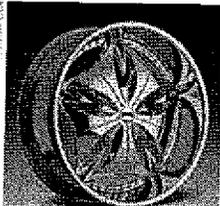
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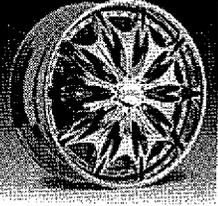
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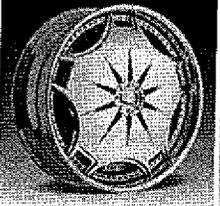
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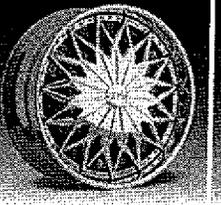
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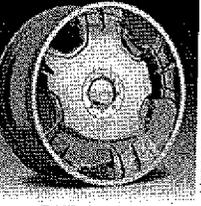
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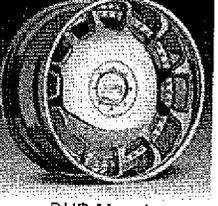
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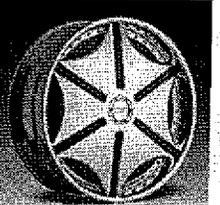
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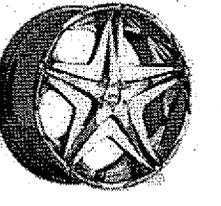
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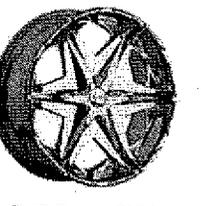
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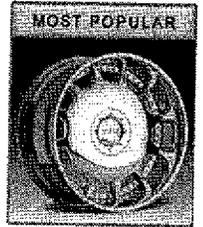
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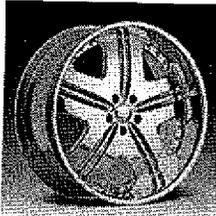


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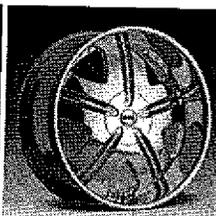


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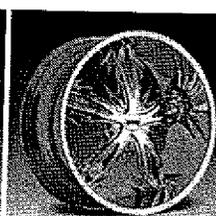




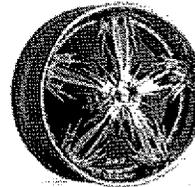
DUB Shoreline



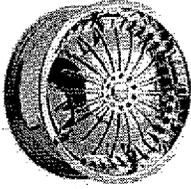
DUB Shoreline SUV



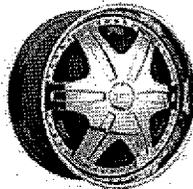
DUB Spine 1pc



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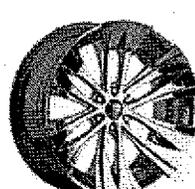
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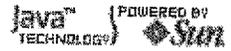
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<input type="checkbox"/>	<input type="checkbox"/>	 22" inch TIS 03 Wheels Chrysler DUB Used 300 Magnum		-	\$0.01	\$150.00	6d 01h 34m
<input type="checkbox"/>	<input type="checkbox"/>	 5 Spoke Spinner Wheel YoYo YoYo Bling Dubs		-	\$0.99 \$3.99 <i>Buy It Now</i>	\$5.95	4d 02h 24m
<input type="checkbox"/>	<input type="checkbox"/>	 Authentic DUB TIS 23 Inch Wheel Size ID Chrome Badge		1	\$0.99	\$4.05	8h 26m
<input type="checkbox"/>	<input type="checkbox"/>	 Authentic DUB TIS 28 Inch Wheel Size ID Chrome Badge		1	\$0.99	\$4.05	1d 40m

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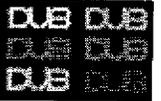
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		DUB 26" dub tis 26 emblems rims wheels tires REAL KIND		-	\$0.99 \$5.00	6d 08h 27m
		1:18 - 1:26 DIECAST RIM AND WHEEL SET DUB		<i>Buy It Now</i>	\$2.50 \$7.50	Not specified 1d 01h 57m
		1:18 - 1:26 DIECAST RIM AND WHEEL SET DUB		<i>Buy It Now</i>	\$2.50 \$7.50	Not specified 1d 01h 58m
		1:18 - 1:26 DIECAST RIM AND WHEEL SET DUB		<i>Buy It Now</i>	\$2.50 \$7.50	Not specified 1d 01h 58m
		1:18 - 1:26 DIECAST RIM AND WHEEL SET DUB		<i>Buy It Now</i>	\$2.50 \$7.50	Not specified 1d 01h 59m
		1:18 - 1:26 DIECAST RIM AND WHEEL SET DUB		<i>Buy It Now</i>	\$2.50 \$7.50	Not specified 1d 02h 00m
		DUB wheels rims tires 20 22 24 sticker decal @ SET OF 3		<i>Buy It Now</i>	\$3.55 \$1.99	6d 12h 54m
		Authentic DUB TIS 22 Inch Wheel Size ID Chrome Badge		4	\$3.75 \$4.05	1d 03h 25m
		Gold Wheels Spinners Dubs Kyosho Mini Z XMOD XMODS		<i>Buy It Now</i>	\$3.99 \$18.99	\$2.00 3d 21h 19m
		CABRAL Rims Board Shorts wheels Mens 34 dubs trunks		-	\$4.99 \$6.00	4d 07h 33m
		DUB Rims Decals Set of 3 Wheels Spinners Car Audio		<i>Buy It Now</i>	\$4.99 \$3.00	3d 07h 09m
		WHEELS ON MEALS - UNCUT & RARE JACKIE CHAN English Dub		1	\$4.99 \$4.99	2d 08h 45m
		dub/iada wheels and tires 1/24		1	\$5.00 \$3.95	4d 06h 45m

	dub/jada wheels and tire sets		1	\$5.00 \$3.95	4d 06h 48m
	SUGAR MINOTT - WHEEL AND TURN ME / DUB "NR"		-	\$5.00 Not specified	3d 10h 19m
	BLUE DUB ICED OUT WHEEL BLING SPINNER WATCH+FREEBIE S4W		- <i>=Buy It Now</i>	\$5.50 \$11.02 \$14.70	2d 17h 26m
	RED DUB ICED OUT WHEEL BLING SPINNER WATCH+FREEBIE S6W		-	\$5.50 \$14.70	3h 46m
	RED DUB ICED OUT WHEEL BLING SPINNER WATCH+FREEBIE S6W		-	\$5.50 \$14.70	1d 03h 46m
	BLUE DUB ICED OUT WHEEL BLING SPINNER WATCH+FREEBIE S4W		- <i>=Buy It Now</i>	\$5.50 \$11.02 \$14.70	1d 17h 26m
	RED DUB ICED OUT WHEEL BLING SPINNER WATCH+FREEBIE S6W		-	\$5.50 \$14.70	2d 03h 46m
	JADA CHEVY ASTRO VAN HOT DUB CITY WHEELS & FRED DURST		- <i>=Buy It Now</i>	\$5.99 \$9.99 \$5.95	1d 11h 59m
	dub/jada wheels and tires		2	\$6.50 \$6.66	4d 06h 42m
	Die Cast 20' Wheel & Tire set 4 Dubs 1:18 w/ Homies		- <i>=Buy It Now</i>	\$7.99 \$8.99 \$2.99	4d 02h 26m
	We Dub these "BIGZ" 20 inch Wheel Brag EMLEMS pair A NEW name for the coolest Wheel brags around!		- <i>=Buy It Now</i>	\$7.99 \$12.99 \$2.00	4d 12h 46m
	We Dub these "BIGZ" 24 inch				

	<p><u>wheel Brag Emblems pair</u> A new Name for the coolest wheel brag emblems!!</p>		-	\$7.99 \$12.99	\$2.00	4d 12h 46m
	<p>☀️ <u>We Dub these "BIGZ" 20 inch Wheel Brag EMLEMS pair</u> A NEW name for the coolest Wheel brags around!</p>		-	\$7.99 \$12.99	\$2.00	6d 08h 39m
	<p>☀️ <u>We Dub These "BIGZ" 22 inch wheel brag Emblems pair</u> A New name for the coolest wheel brag Eblems!</p>		-	\$7.99 \$12.99	\$2.00	6d 08h 39m
	<p>☀️ <u>We Dub these "BIGZ" 24 inch wheel Brag Emblems pair</u> A new Name for the coolest wheel brag emblems!!</p>		-	\$7.99 \$12.99	\$2.00	6d 08h 39m
	<p><u>Die Cast 20' Wheel & Tire set 4 Dubs 1:24 w/ Homie 6 set</u></p>		-	\$8.99 \$9.99	\$3.75	4d 02h 31m
	<p><u>3 SETS OF DUB TYPE WHEELS</u></p>		-	\$8.99	\$4.50	4d 05h 10m
	<p>☀️ <u>DUB CITY SPINTEK WHEEL KIT 4 SETS 1:18 #2006</u></p>		-	\$8.99 \$9.99	\$7.50	6d 01h 44m
	<p>☀️ <u>DUB CITY WHEEL KIT 6 SETS 1:24 #2002</u></p>		-	\$8.99 \$9.99	\$7.50	6d 01h 44m
	<p>☀️ <u>DUB CITY SPINTEK WHEEL KIT 4 SETS 1:24 #2005</u></p>		-	\$8.99 \$9.99	\$7.50	6d 01h 44m
	<p>☀️ <u>DUB CITY WHEEL KIT 6 SETS 1:18 #2004</u></p>		-	\$8.99 \$9.99	\$7.50	6d 01h 44m
	<p>☀️ <u>DUB CITY WHEEL KIT 6 SETS 1:24 #2003</u></p>		-	\$8.99 \$9.99	\$7.50	6d 01h 44m
	<p><u>RARE! 1996 CHEVY CAPRICE CLASSIC WITH DUB WHEELS RED</u></p>		1	\$9.99	\$8.99	1d 05h 08m
	<p><u>1972 TRANS AM</u></p>					

		YELLOW DUB BIG TIME MUSCLE W/EXTRA WHEELS		- =Buy It Now	\$9.99 \$10.99	\$7.00	1d 08h 32m
		1972 TRANS AM BLUE DUB BIG TIME MUSCLE W/ EXTRA WHEELS		- =Buy It Now	\$9.99 \$10.99	\$7.00	1d 08h 32m
		DUB CITY LEXUS GS430 GS 430 LOWENHART CUSTOM WHEELS si		-	\$9.99	\$8.99	1d 06h 12m
		Pair of DUB TIS 28 Inch Wheel Size ID Chrome Badges		-	\$9.99	\$4.05	1d 03h 38m
		Pair of DUB TIS 22 Inch Wheel Size ID Chrome Badges		-	\$9.99	\$4.05	2d 03h 40m
		Pair of DUB TIS 26 Inch Wheel Size ID Chrome Badges		- =Buy It Now	\$9.99 \$35.00	\$4.05	4d 07h 30m
		DUB PEPSI STREET MOTION TOUR HAT CUSTOM WHEELS RIMS		-	\$9.99	\$5.55	4d 19h 14m
		Pair of DUB TIS 23 Inch Wheel Size ID Chrome Badges		- =Buy It Now	\$9.99 \$35.00	\$4.05	6d 03h 07m
		Pair of DUB TIS 24 Inch Wheel Size ID Chrome Badges		- =Buy It Now	\$9.99 \$35.00	\$4.05	6d 13h 34m
		NY SPINNER WHEEL RIM DUB STEEL WATCH HIP HOP BLACK BLIN		- =Buy It Now	\$9.99 \$12.00	\$6.50	2h 39m

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