

ESTTA Tracking number: **ESTTA135037**

Filing date: **04/12/2007**

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	Fey Industries, Inc.		
Entity	Corporation	Citizenship	Minnesota
Address	200 Fourth Avenue North Edgerton, MN 55128 UNITED STATES		

Attorney information	Gregory C. Golla Merchant & Gould P.C. 3200 IDS Center 80 South Eighth Street Minneapolis, MN 55402-2215 UNITED STATES ggolla@merchantgould.com, electronictm@merchantgould.com Phone:612-371-5395
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**Registration Subject to Cancellation**

Registration No	3206104	Registration date	02/06/2007
Registrant	Nexpak Corporation 3475 Forest Lake Drive, Suite 200 Uniontown, OH 44685 UNITED STATES		
Goods/Services Subject to Cancellation	Class 009. First Use: 1999/07/23 , First Use In Commerce: 1999/07/23 Goods/Services: Injection molded media storage container for holding a single optical media disc on a media disc retaining hub		

Attachments	14447.3USTB.pdf ( 5 pages )(248277 bytes )
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Signature	/Gregory Golla/
Name	Gregory C. Golla
Date	04/12/2007



security containers for recorded media, namely, audio cassettes, video cassettes, compact disks, and computer disks" and in the marketing and sale thereof in interstate commerce since at least as early as 1995.

4. Petitioner has advertised and promoted its TRIMPAK mark extensively. Petitioner has also made substantial sales of products under said mark. As a result of such use and promotion, Petitioner's TRIMPAK mark has developed and represents valuable goodwill inuring to the benefit of Petitioner.

5. Petitioner's TRIMPAK mark is famous, particularly within the storage media market, within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and became famous before Registrant commenced use of Registrant's Mark.

6. Petitioner has priority with respect to the marks at issue in this opposition. Petitioner adopted and commenced use of its TRIMPAK mark as a trademark before Registrant adopted the TRIMPAK mark. Petitioner's usage of its TRIMPAK mark commenced at least as early as 1995, over nine (9) years prior to Registrant's filing date of its application.

7. Upon information and belief, Registrant had knowledge of the fact that Petitioner used the term TRIMPAK as a trademark before it adopted the TRIMPAK mark.

8. Registrant's TRIMPAK mark is confusingly and deceptively similar to Petitioner's previously used and duly registered TRIMPAK mark.

9. Registrant's alleged goods are closely related and/or identical to Petitioner's goods marketed and sold by Petitioner in connection with its TRIMPAK mark. For example, both parties' goods are media storage products.

10. Upon information and belief, the goods listed in Petitioner's TRIMPAK registrations and Registrant's TRIMPAK application are promoted and sold in the same channels of trade to the same consumers or class of consumers.

11. Registrant's TRIMPAK mark is identical in sight, sound and commercial impression to Petitioner's TRIMPAK mark.

12. Due to the similarity between Registrant's claimed mark, TRIMPAK, and Petitioner's previously used TRIMPAK mark, the related nature of the goods of the respective parties, customers and potential customers are likely to believe that Registrant's products originate from Petitioner, resulting in a likelihood of confusion in the marketplace, and damage to Petitioner.

13. The use and registration by Registrant of the mark TRIMPAK for Registrant's goods is likely to cause confusion or to cause mistake or deception in the trade, and among purchasers and potential purchasers, with Petitioner's previously used TRIMPAK mark, again resulting in damage to Petitioner.

14. Because of the related nature of the goods, and the similarity of the marks, use and registration of the term TRIMPAK by Registrant is likely to cause confusion, mistake, or deception that Registrant's goods are those of Petitioner, or are otherwise endorsed, sponsored, or approved by Petitioner for use with Petitioner's products causing further damage to Petitioner.

15. Registrant knew of Petitioner's rights as of the date of the filing of the trademark application.

16. In early 2005, Registrant contacted Petitioner regarding Petitioner's use of TRIMPAK and requested that Petitioner cease and desist alleging a likelihood of confusion between Registrant's mark TRIMPAK and Petitioner's use of TRIMPAK.

17. On June 9, 2005, Petitioner informed Registrant of Petitioner's priority of rights with respect to the mark TRIMPAK.

18. On March 29, 2006, Petitioner's attorney sent samples of labels of use of the mark TRIMPAK with the confirmed first use of 1995.

19. On April 27, 2006, Petitioner filed a petition to cancel the earlier registration of TRIMPAK by Registrant, Registration No. 2,598,396, Cancellation No. 92045743 based upon a likelihood of confusion and Petitioner's priority of rights.

20. On October 25, 2006, the Trademark Trial And Appeal Board entered judgment against the Registrant, cancelling its Registration No. 2,598,396.

21. On April 7, 2006, Registrant filed its application which matured to the present registration with actual knowledge of Petitioner's priority of rights.

22. At the time of filing its trademark application, Registrant knew or should have known that Petitioner had superior rights to use the mark TRIMPAK in commerce.

23. Upon information and belief, Registrant fraudulently signed a false oath based upon the facts above.

24. Registrant's registration is void on the basis of fraud.

25. Registrant's use and registration of the TRIMPAK mark is likely to dilute the distinctive quality of Petitioner's famous TRIMPAK mark, again resulting in damage to Petitioner.

26. Registration of the mark shown in Registration No. 3,206,104 will result in damage to Petitioner under the provisions of Sections 2(d) and 2(f) of the U.S. Trademark Act, 15 U.S.C. Sections 1052(d) and 1052(f), pursuant to the allegations stated above.

WHEREFORE, Petitioner requests that Registration No. 3,206,104 be cancelled and that this Petition to Cancel Registration be sustained.

Please direct all correspondence to:

Gregory Golla  
MERCHANT & GOULD P.C.  
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Minneapolis, MN 55402-9944

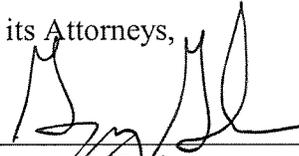
The Petitioner appoints D. Randall King; John A. Clifford, Reg. No. 30,247; Scott W. Johnston, Reg. No. 39,721; Gregory C. Golla, and Andrew S. Ehard, Charles Golla of the firm of Merchant & Gould P.C., and all of its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Please charge the \$300 filing fee for this Petition to Cancel to Deposit Account No. 13-2725 of Petitioner's counsel noted below.

Respectfully submitted,

Fey Industries, Inc.

By its Attorneys,



Gregory C. Golla  
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Date: 4-12-07