

ESTTA Tracking number: **ESTTA149218**

Filing date: **07/03/2007**

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

Proceeding	92047363
Party	Plaintiff Fey Industries, Inc. Fey Industries, Inc. ,
Correspondence Address	Gregory Golla Merchant & Gould, P.C. P.O. Box 2910 Minneapolis, MN 55402-9944 UNITED STATES ggolla@merchantgould.com, electronictm@merchantgould.com
Submission	Other Motions/Papers
Filer's Name	Gregory C. Golla
Filer's e-mail	ggolla@merchantgould.com, electronictm@merchantgould.com
Signature	/Gregory Golla/
Date	07/03/2007
Attachments	14447.3USTB Declaration.pdf (18 pages)(887181 bytes)

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

Fey Industries, Inc.,)	
	)	Cancellation No. 92047363
Petitioner,)	
	)	Mark: TRIMPAK
v.)	
	)	Reg. No.: 3,206,104
Nexpak Corporation,)	
	)	Filing Date: April 7, 2006
Registrant.)	
_____	)	Registered: February 6, 2007

DECLARATION OF GREGORY GOLLA

I, Gregory Golla, declare:

1. I am an attorney for Petitioner, Fey Industries, Inc.
2. A true and correct copy of the Petition for Cancellation in Cancellation No. 92045743 is attached hereto as Exhibit A.
3. A true and correct copy of the status report generated on July 2, 2007, by the Trademark Application and Registration Retrieval system, for Registration No. 2,598,396 for the mark TRIMPAK for “plastic security containers for recorded media, namely, audio cassettes, video cassettes, compact disks, microdisks, minidisks, digital video disks, game cartridges and computer disks” is attached hereto as Exhibit B.
4. A true and correct copy of a Notice issued by the Trademark Trial and Appeal Board to Nexpark Corporation (sic), dated June 13, 2006, giving notice of Fey's Petition for Cancellation in Cancellation No. 92045743 is attached hereto as Exhibit C.

5. A true and correct copy of a Notice of Default sent by the Trademark Trial and Appeal Board to Nexpark Corporation (sic) in Cancellation No. 92045743 is attached hereto as Exhibit D.

6. A true and correct copy of the notice that judgment by default was entered by the Trademark Trial and Appeal Board in Cancellation No. 92045743 is attached hereto as Exhibit E.

7. A true and correct copy of the status report generated on July 2, 2007, by the Trademark Application and Registration Retrieval system, for Registration No. 3,206,104 for the mark TRIMPAK for "injection molded media storage container for holding a single optical media disc on a media disc retaining hub" is attached hereto as Exhibit F.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 7-3-07

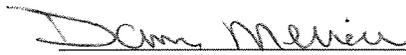


Gregory Golla
MERCHANT & GOULD
80 South Eighth Street, Suite 3200
Minneapolis, Minnesota 55402-2215
(612)332-5300

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECLARATION OF GREGORY GOLLA has been served on counsel for Registrant by first class mail, postage prepaid, this 3rd day of July, 2007 as follows:

Fred H. Zollinger III
Zollinger & Burleson LTD.
P.O. Box 2368
North Canton, OH 44720



Donna Mericle

M&G 14447.3USAA

TRADEMARK

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

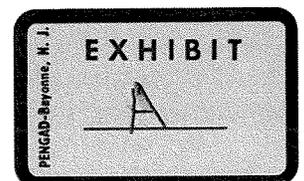
Fey Industries, Inc.)	
	)	Cancellation No. _____
Petitioner,)	
	)	Mark: TRIMPAK
v.)	
	)	Reg. No. 2,598,396
Nexpak Corporation)	
	)	Filing Date: March 9, 1999
Registrant.)	
_____	)	Registered: July 23, 2002

PETITION FOR CANCELLATION

Fey Industries, Inc., a corporation duly organized and existing under the laws of Minnesota, and its division Blackburn, having its principal place of business at 200 Fourth Ave. N., Edgerton, MN, 55128 ("Fey Industries or Petitioner"), believes it will be damaged by the registration of the mark shown in Registration No. 2,598,396, registered July 23, 2002, by Nexpak Corporation, and hereby petitions to cancel the registration of the mark. The grounds for cancellation are as follows:

1. Registrant is the owner of the trademark TRIMPAK for " PLASTIC SECURITY CONTAINERS FOR RECORDED MEDIA, NAMELY, AUDIO CASSETTES, VIDEO CASSETTES, COMPACT DISKS, MICRODISKS, MINIDISKS, DIGITAL VIDEO DISKS, GAME CARTRIDGES AND COMPUTER DISKS " in International Class 9.

2. Upon information and belief, Registrant has not used the mark on goods prior to July 23, 1999, and is not entitled to a constructive date of first use earlier than the filing date of the intent-to-use application, March 9, 1999.



3. Petitioner is the owner of the mark TRIMPAK, having adopted and continuously used said mark on or in connection with "SECURITY CONTAINERS FOR RECORDED MEDIA" 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 three (3) 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 for Petitioner's TRIMPAK mark and Registrant's TRIMPAK registration are promoted and sold in the same or similar channels of trade to the same or similar 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'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.

16. Registration of the mark shown in Registration No. 2,598,396 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. 2,598,396 be cancelled and that this Petition to Cancel Registration be sustained.

Please direct all correspondence to:

Gregory Golla
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-9944

The Petitioner appoints D. Randall King; John A. Clifford, Reg. No. 30,247; John L. Beard, Reg. No. 27,612; Sandra Epp Ryan, Reg. No. 39,667; Scott W. Johnston, Reg. No. 39,721; Gregory C. Golla, and Andrew S. Ehard, Charles Golla of the firm of Merchant & Gould P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

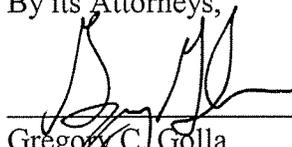
Please charge the \$300 filing fee for this Petition to Cancel to Deposit Account No. 13-2725 of Petitioner's counsel noted below.

Respectfully submitted,

Fey Industries, Inc.

By its Attorneys,

Date: 4-27-06



Gregory C. Golla
Scott W. Johnston
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, Minnesota 55402-2215
(612) 332-5300

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-07-02 14:33:07 ET

Serial Number: 75659757 Assignment Information

Registration Number: 2598396

Mark (words only): TRIMPAK

Standard Character claim: No

Current Status: Registration canceled under Section 18.

Date of Status: 2006-11-22

Filing Date: 1999-03-09

Transformed into a National Application: No

Registration Date: 2002-07-23

Register: Principal

Law Office Assigned: LAW OFFICE 112

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 845 -TTAB

Date In Location: 2006-11-22

LAST APPLICANT(S)/OWNER(S) OF RECORD

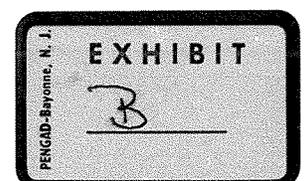
1. NEXPARK CORPORATION

Address:

NEXPARK CORPORATION
6370 WISE AVENUE, NW
NORTH CANTON, OH 44720
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware



GOODS AND/OR SERVICES

International Class: 009

Class Status: Section 18 - Cancelled

PLASTIC SECURITY CONTAINERS FOR RECORDED MEDIA, NAMELY, AUDIO CASSETTES, VIDEO CASSETTES, COMPACT DISKS, MICRODISKS, MINIDISKS, DIGITAL VIDEO DISKS, GAME CARTRIDGES AND COMPUTER DISKS

Basis: 1(a)

First Use Date: 1999-07-23

First Use in Commerce Date: 1999-07-23

ADDITIONAL INFORMATION

Prior Registration Number(s):

2243366

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-11-22 - Canceled Section 18 -Total

2006-11-22 - Cancellation terminated for Proceeding

2006-10-25 - Cancellation granted for Proceeding

2006-04-28 - Cancellation Instituted No. 999999

2002-07-23 - Registered - Principal Register

2002-05-06 - Allowed for Registration - Principal Register (SOU accepted)

2002-02-06 - Communication received from applicant

2001-04-18 - Letter of suspension mailed

2001-03-06 - Communication received from applicant

2000-09-06 - Non-final action mailed

2000-08-23 - Statement of use processing complete

2000-06-26 - Amendment to Use filed

2000-02-29 - Notice of allowance - mailed

1999-12-07 - Published for opposition

1999-11-05 - Notice of publication

1999-09-08 - Approved for Pub - Principal Register (Initial exam)

1999-08-31 - Examiner's amendment mailed

1999-08-27 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

JOSEPH A. SEBOLT

Correspondent

FRED H. ZOLLINGER III
ZOLLINGER & BURLESON LTD.
P.O. BOX 2368
NORTH CANTON, OH 44720

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: June 13, 2006

Cancellation No. 92045743

FEY INDUSTRIES, INC. FEY
INDUSTRIES, Inc.

v.

NEXPARK CORPORATION

Clara Vela, Paralegal Specialist

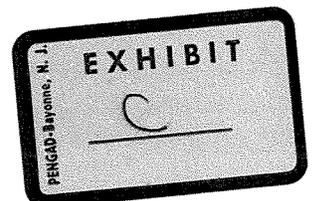
The notice instituting this proceeding and a copy of the petition to cancel were forwarded to registrant but were returned by the Postal Service as undeliverable.

The Office was advised that service upon registrant could be effected as follows:

Nexpark Corporation
3475 Forest Lake Drive
Suite 200
Uniontown, OH 44685

Accordingly, the above notice, with enclosure, is remailed as indicated above.

Registrant is allowed until forty days from the mailing date of this order in which to inform this Office of its correct address in order that all records may be amended. Compliance with Trademark Rule 2.193(b) and Trademark 2.119(a) is required.



If there has been any transfer of interest in the involved registration, registrant must so advise the Board and registrant must submit copies of the appropriate documents. See Section 10 of the Trademark Act and Patent and Trademark Rules 3.71 and 3.73.

In view of the circumstances, the time for filing an answer to the petition to cancel is extended to forty days from the mailing date of this order. Any discovery requests or notices served that remain unanswered as of the mailing date of this order must be reserved in accordance with the rules, unless otherwise agreed to by the parties.

In accordance with the Trademark Rules of Practice, discovery is open, and the close of discovery and testimony dates are set as indicated below. In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Discovery period to close:	December 30, 2006
30-day testimony period for party in position of plaintiff to close:	March 30, 2007
30-day testimony period for party in position of defendant to close:	May 29, 2007
15-day rebuttal testimony period to close:	July 13, 2007

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: August 23, 2006

Cancellation No.92045743

FEY INDUSTRIES, INC.

v.

NEXPARK CORPORATION

Clara Vela, Paralegal Specialist

Answer was due in this case on July 23, 2006. Inasmuch as it appears that no answer has been filed, nor has respondent filed a motion to extend its time to answer, notice of default is hereby entered against respondent under Fed. R. Civ. P. 55(a).

Respondent is allowed until thirty days from the mailing date of this order to show cause why judgment by default should not be entered against respondent in accordance with Fed. R. Civ. P. 55(b).



Gregory Golla

From: ESTTA@uspto.gov
Sent: Wednesday, October 25, 2006 6:31 AM
To: Gregory Golla
Subject: TTAB Response

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Baxley Mailed: October 25, 2006

Cancellation No. 92045743

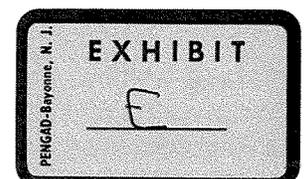
Fey Industries, Inc.

v.

NEXPARK CORPORATION

By the Trademark Trial and Appeal Board:

On August 23, 2006, the Board sent a notice of default to respondent because no answer had been filed. No response thereto is of record. Accordingly, judgment by default is hereby entered against respondent, the petition to cancel is granted, and Registration No. 2598396 will be cancelled in due course. See Fed. R. Civ. P. 55, and Trademark Rule 2.114(a).



10/25/2006

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-07-02 14:32:27 ET

Serial Number: 78856796 Assignment Information

Registration Number: 3206104

Mark

TRIMpak

(words only): TRIMPAK

Standard Character claim: Yes

Current Status: A cancellation proceeding has been filed at the Trademark Trial and Appeal Board and is now pending.

Date of Status: 2007-04-12

Filing Date: 2006-04-07

Transformed into a National Application: No

Registration Date: 2007-02-06

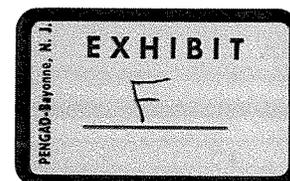
Register: Principal

Law Office Assigned: LAW OFFICE 102

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2007-02-06



LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Nexpak Corporation

Address:

Nexpak Corporation
3475 Forest Lake Drive, Suite 200
Uniontown, OH 44685
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Delaware

GOODS AND/OR SERVICES

International Class: 009**Class Status:** Active

Injection molded media storage container for holding a single optical media disc on a media disc retaining hub

Basis: 1(a)**First Use Date:** 1999-07-23**First Use in Commerce Date:** 1999-07-23

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2007-04-12 - Cancellation Instituted No. 999999

2007-02-06 - Registered - Principal Register

2006-11-21 - Published for opposition

2006-11-01 - Notice of publication

2006-09-30 - Law Office Publication Review Completed

2006-09-27 - Assigned To LIE

2006-09-19 - Approved for Pub - Principal Register (Initial exam)

2006-09-18 - Assigned To Examiner

2006-04-13 - Notice Of Pseudo Mark Mailed

2006-04-12 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Fred H. Zollinger III

Correspondent

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Fax Number: 866-311-9964
