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Filing date: **05/18/2007**

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	J & D Brush Co., Inc.		
Entity	Corporation	Citizenship	New York
Address	5 Admas Avenue Hauppauge, NY 11788 UNITED STATES		

Attorney information	Howard C. Miskin Stoll, Miskin & Badie 350 Fifth Avenue Suite 4710 New York, NY 10118 UNITED STATES howard@smbtlaw.com, yasmin@smbtlaw.com Phone:212-268-0900		
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**Registration Subject to Cancellation**

Registration No	3020126	Registration date	11/29/2005
Registrant	Export Depot USA CORP 205 West Service Rd. Champlain, NY 12919 UNITED STATES		
Goods/Services Subject to Cancellation	Class 011. First Use: 2004/01/01 , First Use In Commerce: 2004/01/01 Goods/Services: electric automatic bread makers for domestic use; electric kettles, electric pressure cookers, electric rice cookers, gas rice cookers; slow cookers; electric toasters; electric coffee makers; electric barbecue griddles; ovens for cooking; electric cooking stoves; electric cooking stoves with ovens; gas cooking stoves; gas cooking stoves with ovens; microwave ovens; refrigerators, gas refrigerators, freezer, cold/hot water dispensers; cold water dispensers; hot water dispensers; electric fans, ventilating fans, electric air purifiers, range hoods for cookers, electric dehumidifiers, electric humidifiers, ceiling fans, air conditioners for rooms, electric hair dryers, electric clothes dryers; electric coffee makers, Electric indoor grills, Electric slow cookers, Electric deep fryers, Electric skillet		

Attachments	78730175#TMSN.jpeg ( 1 page )( bytes ) 78759104#TMSN.jpeg ( 1 page )( bytes ) Petition to cancel LUXOR.pdf ( 5 pages )(16977 bytes )
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Signature	/hcm/
Name	Howard C. Miskin
Date	05/18/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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J & D BRUSH CO., INC. :  
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 Petitioner, : Cancellation No. \_\_\_\_\_  
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 - against - : (Reg. No. 3,020,126)  
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 :  
 EXPORT DEPOT USA CORP. :  
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 :  
 Registrant. :  
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PETITION TO CANCEL

J & D Brush Co., Inc. (hereinafter “J & D Brush” or “Petitioner”), a New York Corporation, having a business address of 5 Adams Avenue, Hauppauge, New York, 11788, asserts that it is and will be damaged by U.S. Trademark Registration No. 3,020,126 for the trademark LUXOR, granted to Export Depot USA Corp. (hereinafter “Export Depot USA” or “Registrant”), and hereby petitions to cancel the same.

As grounds for cancellation, Petitioner, by its attorneys, Stoll, Miskin & Badie, alleges as follows:

1. Upon information and belief, Registrant has abandoned the mark and registration by its being an inactive New York Corporation<sup>1</sup>. Its former business address was 205 West Service Rd., Champlain, New York, 12919. No record of Registrant can be found at that address.

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<sup>1</sup> New York State Department of State’s Division of Corporations’ online Entity Status information states that Export Depot USA Corp. is inactive.

2. Export Depot USA had obtained registration of the mark “LUXOR” in International Class 11 for a wide variety of goods, including “electric automatic bread makers for domestic use; electric kettles, electric pressure cookers, electric rice cookers, gas rice cookers; slow cookers; electric toasters; electric coffee makers; electric barbecue griddles; ovens for cooking; electric cooking stoves; electric cooking stoves with ovens; gas cooking stoves; gas cooking stoves with ovens; microwave ovens; refrigerators, gas refrigerators, freezer, cold/hot water dispensers; cold water dispensers; hot water dispensers; electric fans, ventilating fans, electric air purifiers, range hoods for cookers, electric dehumidifiers, electric humidifiers, ceiling fans, air conditioners for rooms, electric hair dryers, electric clothes dryers; electric coffee makers, Electric indoor grills, Electric slow cookers, Electric deep fryers, Electric skillets.” The filing date of the Application was June 10, 2004, alleging a first use in commerce of January 1, 2004. Registration No. 3,020,126 was issued on the said Application on November 29, 2005.

3. Petitioner commenced its earlier use of the mark “LUXOR” in 1995 and the mark “LUXOR PRO” in 2002. Both of these marks are used to identify Petitioner’s goods hair combs and hair brushes.

4. Upon information and belief, Registrant was solely a wholesale exporter of appliances for use in countries with 220 voltage electrical systems, which are almost all of the European, Asian and African countries.

5. Upon information and belief, Registrant was not the manufacturer of any of the goods that it offered for sale.

6. Upon information and belief, Registrant is not offering for sale electric hair dryers bearing the mark “LUXOR.”

7. Petitioner has two pending applications for variations of its “LUXOR” mark. The application for “LUXOR PRO,” Serial No. 78/730,175, covering “hair combs and hair brushes,” was filed on October 10, 2005. The application for “LUXOR CURL DRY,” Serial No. 78/759,104, covering “hair dryers and hair dryer attachments,” was filed on November 22, 2005. Both of the Petitioner’s said applications have been refused registration by the Patent and Trademark Office based on Section 2(d), citing Registrant’s registration for “LUXOR.”

8. Over the years, Petitioner has expended considerable time, effort and expense in promoting its trademark “LUXOR” and other trademarks incorporating the mark “LUXOR” for hair brushes, hair combs, electric hair dryers and accessories for hair dyers. The purchasing public relies upon and recognizes Petitioner’s goods by such marks.

9. If Registrant is permitted to retain the registration sought to be canceled, Petitioner’s trademark applications Serial No’s 78/730,175 and 78/759,104 will be denied.

10. Registrant’s “LUXOR” Registration must be cancelled because it is likely to cause confusion, to cause mistake or to deceive.

11. Registrant’s “LUXOR” Registration must be cancelled because it is likely to dilute the distinctive quality of Petitioner’s marks.



