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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	Rhino Linings USA, Inc.		
Entity	Corporation	Citizenship	California
Address	9151 Rehco Road San Diego, CA 92121 UNITED STATES		

Attorney information	David A., Harlow Nelson Mullins Riley & Scarborough LLP 4140 Parklake Avenue GlenLake One, Suite 200 Raleigh, NC 27612 UNITED STATES david.harlow@nelsonmullins.com Phone:919-877-3830		
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Registration Subject to Cancellation

Registration No	1698407	Registration date	06/30/1992
Registrant	Rapid Rack Industries, Inc. 14421 BONELLI STREET CITY OF INDUSTRY, CA 91746 UNITED STATES		

Goods/Services Subject to Cancellation

Class 020. First Use: 1991/01/08 First Use In Commerce: 1991/01/08 All goods and services in the class are cancelled, namely: work tables with and without wheels, work benches, industrial shelving, storage racks, and component parts therefor
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Related Proceedings	Trademark Application Serial Nos. 78855807, 78832703, 78832653, and 78832237.
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Attachments	Petition_for_Cancellation--RHINO_RACK.pdf (6 pages)(64956 bytes)
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Signature	/David A. Harlow/
Name	David A., Harlow
Date	10/15/2007

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

In the Matter of Registration No. 1,698,407

Date of Issue: June 30, 1992

RHINO LININGS USA, INC.,)	
Petitioner,)	
)	
vs.)	Cancellation No. _____
)	
RAPID RACK INDUSTRIES, INC.,)	
Applicant.)	
)	

PETITION FOR CANCELLATION

Petitioner Rhino Linings USA, Inc. (“Petitioner”), a California corporation having a place of business at 9151 Rehco Road, San Diego, California, believes that it is or will be damaged by Registration No. 1,698, 407, and hereby petitions to cancel the same.

As grounds for this Petition, it is alleged that:

1. Registrant Rapid Rack Industries, Inc. (“Registrant”) obtained Registration No. 1,698,407 for RHINO RACK for “work tables with and without wheels, work benches, industrial shelving, storage racks, and component parts therefore” in International Class 20 (hereinafter “Registrant’s RHINO RACK Mark”) on June 30, 1992. The present Petition seeks cancellation of this Registration on two separate grounds. First, Registrant abandoned and failed to use its RHINO RACK mark for at least a five-year period between roughly 2001 and 2007. Second,

Registrant committed fraud on the United States Patent and Trademark Office by filing a false affidavit of use under Sections 8 and 9. Registrant's rights therefore are junior to Petitioner's senior applications, and Registration No. 1,698,407 should be cancelled.

2. Petitioner is a global company with substantial knowledge and experience in providing a wide range of polyurethane coating and lining solutions which enhance the toughness and durability of a number of consumer products. Since the late 1980's, Petitioner has been one of nation's leading suppliers of polyurethane coating-related products and services. Petitioner is the owner of a number of RHINO marks in connection with its polyurethane coating-related goods and services, including, *inter alia*, Registration Nos. 1,910,469; 2,135,280; 2,408,522; 2,445,984; 2,456,926; 2,682,202; 2,752,078; 3,197,087, and others.

3. Application Serial Nos. 78/855,807; 78/832,703; 78/832,653; and 78/832,237 (hereinafter "Petitioner's Applications") for the marks RHINO, RHINO SHELVING, RHINO STORAGE, and RHINO GARAGE (hereinafter "Petitioner's RHINO Marks") were filed by Petitioner on March 16, 2006 on an intent to use basis.

4. Application Serial No. 78/855,807 is for the mark RHINO for "sprayable polyurethane coating for application on a wide range of commercial, industrial and consumer products, namely, vehicle trailers, van floors, buildings, sidewalks, commercial equipment, truck beds, furniture, shelving and cabinetry" in International Class 2; "polyurethane coated furniture for home storage use in garages, basements, utility rooms and storage sheds, namely shelving, cabinets and storage racks" in International Class 20; and "applying protective polyurethane coating on a wide range of commercial, industrial and consumer products" in International Class 40.

5. Application Serial No. 78/832,703 for RHINO SHELVING is for the mark “sprayable polyurethane coating for application on a wide range of commercial, industrial and consumer products, namely, vehicle trailers, van floors, buildings, sidewalks, commercial equipment, truck beds, and furniture” in International Class 2; “polyurethane coated furniture for home storage use in garages, basements, utility rooms and storage sheds, namely shelving, cabinets and storage racks” in International Class 20; and “applying protective polyurethane coating on a wide range of commercial, industrial, and consumer products, including furniture” in International Class 40.

6. Application Serial No. 78/832,653 is for the mark RHINO STORAGE for “sprayable polyurethane coating for application on a wide range of commercial, industrial and consumer products, namely, vehicle trailers, van floors, buildings, sidewalks, commercial equipment, truck beds, and furniture” in International Class 2; “polyurethane coated furniture for home storage use in garages, basements, utility rooms and storage sheds, namely shelving, cabinets and storage racks” in International Class 20; and “applying protective polyurethane coating on a wide range of commercial, industrial, and consumer products, including furniture” in International Class 40.

7. Application Serial No. 78/832,237 is for the mark RHINO GARAGE for “sprayable polyurethane coating for application on a wide range of commercial, industrial and consumer products, namely, vehicle trailers, van floors, buildings, sidewalks, commercial equipment, truck beds, and furniture” in International Class 2; “polyurethane coated furniture for home storage use in garages, basements, utility

rooms and storage sheds, namely shelving, cabinets and storage racks” in International Class 20; and “applying protective polyurethane coating on a wide range of commercial, industrial, and consumer products, including furniture” in International Class 40.

8. Upon information and belief, the Registrant manufactures and sells mostly material-handling storage equipment for industrial and commercial applications, such as heavy duty boltless shelving, mezzanines, archive shelving, mobile cart shelving, and mobile aisle shelving, workbenches, carts, drawers and other accessories. Upon information and belief, these goods are not manufactured and sold under Registrant’s RHINO RACK Mark, but are instead manufactured and sold under the mark RAPID RACK, Registration No. 1,662,493, another mark owned by Registrant.

9. Upon information and belief, prior to approximately late 1991 or early 1992, Registrant manufactured and sold work benches and shelving for use by individual consumers under Registrant’s RHINO RACK mark, but, between approximately late 1991 or early 1992 and approximately mid-2007, discontinued use of the RHINO RACK mark. Upon information and belief, Registrant began using—and continues to use—the GORILLA RACK mark of Registration No. 2,422,507 and Application Serial No. 76/671,757 for its storage products for home use.

10. By failing to use its RHINO RACK mark of Registration No. 1,698,407, Registrant abandoned the mark, such that the registration therefor should be cancelled.

11. On April 9, 2002, Registrant filed a Combined Declaration of Use in Commerce and Application for Renewal of Trademark Registration with respect to the RHINO RACK mark. The Declaration of Use submitted by Registrant contained sworn

testimony that the RHINO RACK mark was in use by Registrant as of March 26, 2002. Upon information and belief, Registrant was not using the RHINO RACK mark as of March and April of 2002 in connection with any goods, including the goods for which it had obtained Registration No. 1,698,407.

12. Upon information and belief, the Declaration of Use filed by Registrant on April 9, 2002 was made by an authorized agent of Registrant with knowledge and belief that the Declaration of Use was false, and this false statement was intended to induce, and did induce, authorized agents of the United States Patent and Trademark Office to determine that Registrant's RHINO RACK mark should remain alive for having continued in use.

13. Accordingly, the Declaration of Use submitted by Registrant regarding RHINO RACK mark of Registration No. 1,698,407 was fraudulent, such that the registration therefor should be cancelled.

14. Upon information and belief, Registrant may have began using the mark RHINO RACK in connection with storage products for individual consumers within the past six months. If so, this use of the RHINO RACK mark by Registrant is junior to Petitioner's senior applications.

15. Petitioner has been and will continue to be damaged by the issuance and existence of Registration No. 1,698,407. The United States Patent and Trademark Office has refused Petitioner's Applications to register its RHINO Marks with respect to International Class 20, on the alleged grounds that Petitioner's RHINO Marks, when used in connection with the goods described with respect to International Class 20, are confusingly similar to the RHINO RACK mark or Registration No. 1,698,407. On

April 16, 2007, despite Petitioner's efforts to distinguish the parties' respective marks and the goods offered under each, the United States Patent and Trademark Office issued a final refusal for registration of Petitioner's RHINO Marks in International Class 20.

16. Petitioner is damaged and will continue to be damaged because Registrant's continued registration of the mark RHINO RACK for "work tables with and without wheels, work benches, industrial shelving, storage racks, and component parts therefore" in International Class 20 stands as a potential bar to Petitioner's ability to federally register and protect its RHINO, RHINO SHELVING, RHINO STORAGE, and RHINO GARAGE marks.

WHEREFORE, Petitioner respectfully prays that Registration No. 1,698,407 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted this 15th day of October,

RHINO LININGS USA, INC.

By: */David A. Harlow/*

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