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Filing date: **03/06/2008**

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	Top Tobacco, L.P		
Entity	Partnership	Citizenship	Delaware
Composed Of:	Top Tobacco Management Corp., an Illinois corporation		
Address	2301 Ravine Way Glenview, IL 60025 UNITED STATES		

Attorney information	Antony J McShane Neal, Gerber & Eisenberg LLP 2 North LaSalle Street, Suite 2200 Chicago, IL 60602 UNITED STATES apeterson@ngelaw.com, lhirshfeld@ngelaw.com, amcshane@ngelaw.com, gleighton@ngelaw.com Phone:312.269.8000
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Registrations Subject to Cancellation

Registration No	1686628	Registration date	05/12/1992
International Registration No.	NONE	International Registration Date	NONE
Registrant	NAVIGATOR INC. EURO-CANADIAN CENTRE MARLBOROUGH ST., 1ST FLOOR NASSAU, BAHAMAS		

Goods/Services Subject to Cancellation

Class 032. All goods and services in the class are cancelled, namely: [BEER, ALE, LAGER, STOUT, AND SHANDY; SOFT DRINKS; SYRUPS AND CONCENTRATES FOR MAKING SOFT DRINKS; FRUIT JUICES]
Class 034. All goods and services in the class are cancelled, namely: CIGARETTES, [CIGARS, CIGARILLOS; SMOKING TOBACCO, CHEWING TOBACCO, SNUFF, MATCHES,] LIGHTERS [, ASHTRAYS, PIPES, TOBACCO CASES NOT OF PRECIOUS METAL AND CIGARETTE PAPERS]

Grounds for Cancellation

Abandonment	Trademark Act section 14		
Registration No	2950896	Registration date	05/17/2005
International Registration No.	NONE	International Registration Date	NONE
Registrant	VAN NELLE TABAK NEDERLAND BV		

	SLACHTEDYK 28A 8501 ZA JOURE, NETHERLANDS
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Goods/Services Subject to Cancellation

Class 034. All goods and services in the class are cancelled, namely: TOBACCO WHETHER MANUFACTURED OR UNMANUFACTURED; TOBACCO PRODUCTS, NAMELY, HAND-ROLLING TOBACCO, CIGARS, CIGARETTES; TOBACCO SUBSTITUTES, NONE BEING FOR MEDICINAL OR CURATIVE PURPOSES; SMOKERS' ARTICLES, NAMELY, CIGARETTE LIGHTERS NOT OF PRECIOUS METAL, ASHTRAYS NOT OF PRECIOUS METAL, CIGARETTE PAPERS, MATCHES

Grounds for Cancellation

Abandonment	Trademark Act section 14		
Registration No	3328623	Registration date	11/06/2007
International Registration No.	NONE	International Registration Date	NONE
Registrant	VAN NELLE TABAK NEDERLAND BV SLACHTEDIJK 28A 8501 ZA JOURE, NETHERLANDS		

Goods/Services Subject to Cancellation

Class 034. All goods and services in the class are cancelled, namely: CIGARETTES, CIGARS, CIGARILLOS, TOBACCO, MATCHES, LIGHTERS AND ASHTRAYS NOT MADE OF PRECIOUS METALS, PIPES, TOBACCO CASES NOT MADE OF PRECIOUS METALS, CIGARETTE PAPERS, CIGARETTE FILTERS, CIGARETTE TUBES, AND HAND-HELD MACHINES FOR ROLLING AND MAKING CIGARETTES
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Consolidated Petition to Cancel.pdf (6 pages)(18354 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Antony J McShane/
Name	Antony J McShane
Date	03/06/2008

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

In the Matter of

Registration Nos. 1,686,628, 2,950,896, and
3,328,623

TOP TOBACCO, LP,

Petitioner,

v.

VAN NELLE TABAK NEDERLAND BV,

Respondent.

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) Cancellation No. _____
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) CONSOLIDATED PETITION TO
) CANCEL
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CONSOLIDATED PETITION TO CANCEL

This Consolidated Petition to Cancel is submitted in the matter of Registration Nos. 1,686,628, 2,950,896, and 3,328,623 all of which are owned by Van Nelle Tabak Nederland BV, located at Slachtedyk 28A, 8501 Za Joure, Netherlands. Registration No. 1,686,628 issued on May 12, 1992 for the mark ROUTE 66 & Design in connection with cigarettes and lighters in International Class 34. Registration No. 2,950,896 issued on May 17, 2005 for the mark ROUTE 66 ORIGINAL & Design in connection with tobacco whether manufactured or unmanufactured; tobacco products, namely, hand-rolling tobacco, cigars, cigarettes; tobacco substitutes, none being for medicinal or curative purposes; smokers' articles, namely, cigarette lighters not of precious metal, ashtrays not of precious metal, cigarette papers, matches in International Class 34. Registration No. 3,328,623 issued on November 6, 2007 for the mark ROUTE 66 in connection with cigarettes, cigars, cigarillos, tobacco, matches, lighters and ashtrays not made of precious metals, pipes, tobacco cases not made of precious metals, cigarette papers, cigarette

filters, cigarette tubes, and hand-held machines for rolling and making cigarettes in International Class 34. Top Tobacco, LP, a Delaware limited partnership with a place of business at 2301 Ravine Way Glenview Illinois 60025 (“Top Tobacco”), believes that it will be injured by the continued registration of Registration Nos. 1,686,628, 2,950,896, and 3,328,623 and, therefore, petitions to cancel the same on the following grounds:

1. For many years, Top Tobacco, its predecessors and affiliates have been engaged, *inter alia*, in the manufacture, distribution and sale of smoker’s articles, including, cigarette rolling papers, smoking tobacco, filter tubes and cigarette machines. Top Tobacco distributes its products through tobacco shops, drugstores, tobacco outlets, novelty, convenience and other retail stores, as well as through select restaurants and clubs. As a result, Top Tobacco has become one of the best-known manufacturers of tobacco and tobacco-related products in the United States.

2. Top Tobacco has applied for federal registration of the trademark ROUTE 66 in connection with cigarette making machines in International Class 7, and tobacco, cigarette papers, cigarette filters, cigarette tubes, cigarette rolling machines, cigarette injecting machines, and kits for making cigarettes in International Class 34, Serial No. 77/393,701.

3. On information and belief, Respondent is a corporation incorporated under the laws of the country of the Netherlands. On information and belief, *inter alia*, Respondent manufactures roll-your-own and pipe tobaccos and markets and sells tobacco products in the Netherlands and in other countries.

4. On May 12, 1992, Registration No. 1,686,628 (the “628 Registration”) issued to Andre` and Mairade Ann Levy for the mark ROUTE 66 & Design for use in connection with beer, ale, lager, stout, shandy, soft drinks, syrups and concentrates for

making soft drinks; and fruit juices in International Class 32; cigarettes, cigars, cigarillos, smoking tobacco, chewing tobacco, snuff, matches, lighters, ashtrays, pipes, tobacco cases not of precious metal and cigarette papers in International Class 34. The '628 Registration was based on Section 44(d) of the Trademark Act. On January 12, 1998, Andre` and Mairade Ann Levy assigned their entire interest to the ROUTE 66 & Design mark and the '628 Registration to Navigator, Inc.

5. Upon filing its Section 8 Declaration for the '628 Registration, Navigator, Inc. canceled the registration for International Class 32 goods, and deleted all of the International Class 34 goods with the exception of cigarettes and lighters.

6. On March 7, 2000, Navigator, Inc. assigned the entire interest to the ROUTE 66 & Design mark to Respondent.

7. On May 17, 2005, Registration No. 2,950,896 (the "'896 Registration") issued to Respondent for the mark ROUTE 66 ORIGINAL & Design for use in connection with tobacco whether manufactured or unmanufactured, tobacco products, namely, hand-rolling tobacco, cigars, cigarettes, tobacco substitutes, none being for medicinal or curative purposes, smokers' articles, namely, cigarette lighters not of precious metal, ashtrays not of precious metal, cigarette papers, matches in International Class 34. The '896 Registration is based upon Section 44(d) of the Trademark Act; Respondent has not alleged use of the mark in connection with the '896 Registration.

8. On November 6, 2007, Registration No. 3,328,623 (the "'623 Registration") issued to Respondent for the mark ROUTE 66 for use in connection with cigarettes, cigars, cigarillos, tobacco, matches, lighters and ashtrays not made of precious metals, pipes, tobacco cases not made of precious metals, cigarette papers, cigarette filters, cigarette tubes, and hand-held machines for rolling and making cigarettes in

International Class 34. The '623 Registration was based upon Section 44(e) of the Trademark Act; Respondent has not alleged use of the mark in connection with the '896 Registration.

9. On information and belief, subsequent to the issuance of Registration No. 1,686,628, and long prior to the filing of the applications that resulted in Registration Nos. 2,950,896, and 3,328,623, Respondent discontinued use in the United States of the mark ROUTE 66 (in any and all forms) in connection with the registered goods, to the extent Respondent ever used these marks, with the intent not to resume use in the United States in the foreseeable future. Moreover, on information and belief, Respondent has not used the '896 and '623 Registrations, which are based on foreign registrations, during the period between the dates of registration and the filing of this Petition, and such non-use of the marks in commerce is not excusable non-use. Therefore, on information and belief, Respondent has abandoned the registered ROUTE 66 & Design, ROUTE 66 ORIGINAL & Design or ROUTE 66 marks within the meaning of Section 45 of the Trademark Act, 15 U.S.C. § 1127, and has not complied with the requirements of Section 44 of the Trademark Act, 15 U.S.C. § 1126.

10. Accordingly, Registration Nos. 1,686,628, 2,950,896, and 3,328,623 should be cancelled in accordance with Section 14 of the Trademark Act, 15 U.S.C. § 1064.

11. Respondent's continued registration of the ROUTE 66 & Design, ROUTE 66 ORIGINAL & Design, and ROUTE 66 marks, would likely result in damage and injury to Top Tobacco in that it is likely to cause confusion, or to cause mistake, or to deceive with respect to Top Tobacco's ROUTE 66 mark.

WHEREFORE, Top Tobacco requests that Registration Nos. 1,686,628, 2,950,896, and 3,328,623 be canceled and that this Consolidated Petition for Cancellation be granted.

Petitioner requests that the requisite filing fee be charged to the deposit account of Neal, Gerber & Eisenberg, Account No. 502261.

Please address all communications relating to this matter to Antony J. McShane, Lara V. Hirshfeld, and Gregory J. Leighton, Neal, Gerber & Eisenberg, Two North LaSalle Street, Chicago, Illinois 60602-3801.

Respectfully submitted,

Date: March 6, 2008

By: /Antony J. McShane/
One of the Attorneys for
Top Tobacco, LP

Antony J. McShane
Lara V. Hirshfeld
Gregory J. Leighton
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Chicago, Illinois 60602-3801
(312) 269-8000

CERTIFICATE OF SERVICE

I, Lara V. Hirshfeld, an attorney, state that I served a copy of the foregoing CONSOLIDATED PETITION TO CANCEL upon:

BREWSTER TAYLOR
STITES & HARBISON, PLLC
1199 NORTH FAIRFAX STREET, SUITE 900
ALEXANDRIA, VA 22314-1437

via U.S. Mail on this 6th day of March 2008.

/Lara V. Hirshfeld/
Lara V. Hirshfeld