

ESTTA Tracking number: **ESTTA226834**

Filing date: **07/28/2008**

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	Saul Zaentz Company d.b.a. Tolkien Enterprises		
Entity	Corporation	Citizenship	Delaware
Address	2600 Tenth Street Berkeley, CA 94710 UNITED STATES		

Attorney information	Carole F. Barrett Howard, Rice, Nemerovski, Canady, Falk & Rabkin Three Embarcadero Center 7th Floor San Francisco, CA 94111 UNITED STATES trademark@howardrice.com, cbarret@howardrice.com Phone:(415) 434-1600		
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#### Registrations Subject to Cancellation

Registration No	3328132	Registration date	10/30/2007
International Registration No.	NONE	International Registration Date	NONE
Registrant	YNK KOREA CO. LTD. 1499-5, SEOCHO-DONG, SEOCHO-GU SEOUL, 137-070 KOREA, REPUBLIC OF		

#### Goods/Services Subject to Cancellation

Class 009. All goods and services in the class are cancelled, namely: Computer game software; computer operating programs; and computer game programs
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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)		
Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	3328133	Registration date	10/30/2007
International Registration No.	NONE	International Registration Date	NONE
Registrant	YNK KOREA CO. LTD. 1499-5, SEOCHO-DONG, SEOCHO-GU SEOUL, 137-070 KOREA, REPUBLIC OF		

#### Goods/Services Subject to Cancellation

Class 041.
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All goods and services in the class are cancelled, namely: Providing online computer games
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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)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Trademark Act section 44(e), the appearance and format of a U.S. registration mark must be a substantially exact representation of the mark as it appears in the foreign registration

## Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ROHAN		
Goods/Services	Collectibles, action figures, puzzles, maps, jewelry, role-playing games, table-top games, video games, and computer games		

Attachments	f8da00a1-0c02-460b-a823-e66758268b7a-000.pdf ( 13 pages )(703599 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	/CFB_jmb/
Name	Carole F. Barrett
Date	07/28/2008

I hereby certify that this correspondence is being deposited electronically with the Trademark Trial and Appeal Board on the date shown below.

By and through Petitioner's attorney, the Trademark office is authorized by Carole F. Barrett, Attorney for Petitioner, to charge the requisite filing fee of \$600.00 to the Deposit Account of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, Account No. 08-2792. Please deduct any additional fees that may be due, or credit any overpayment, to the same Deposit Account.

Carole F. Barrett  
Carole F. Barrett

Dated: July 28, 2008

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

THE SAUL ZAENTZ COMPANY d.b.a.  
TOLKIEN ENTERPRISES,

Petitioner,

v.

YNK KOREA CO. LTD.,

Registrant.

Consolidated Petition for Cancellation

Marks: ROHAN  
ROHAN (and Design)

Registration Nos. 3,328,132  
3,328,133

Filed: February 8, 2006

Registered on  
Supplemental Register: October 30, 2007

Cancellation No.: \_\_\_\_\_

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

CONSOLIDATED PETITION FOR CANCELLATION

The Saul Zaentz Company d.b.a. Tolkien Enterprises ("Petitioner" or "SZC"), a Delaware corporation with its principal place of business at 2600 Tenth Street, Berkeley, California 94710, believes that it is and will be damaged by the continued registrations of the ROHAN word mark and the ROHAN design mark, shown on the Supplemental Register in Registration Nos. 3,328,132 and 3,328,133 (collectively, the "Registered Marks"), respectively, and hereby petitions to cancel the same.

CONSOLIDATED PETITION FOR CANCELLATION

As grounds for this consolidated petition, Petitioner alleges:

1. On February 8, 2006 (“Registrant’s Filing Date”), YNK Korea Co. Ltd. (“Registrant”), a company based in Korea with an address at 1499-5 Seocho-Dong, Seocho-Gu, Seoul, Republic of Korea 137-070, filed applications under the name SunnyYNK Inc. to register the word mark ROHAN and the design mark ROHAN with the United States Patent and Trademark Office (“PTO”). These applications were assigned Application Serial Nos. 78/809,668 (“ROHAN Word Application”) and 78/809,667 (“ROHAN Design Application”), respectively (collectively, the “ROHAN Applications”).

2. In the formal application papers for each of the ROHAN Applications purportedly filed by Registrant under notice of 18 U.S.C. §1001, Registrant stated that Registrant “believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive. . . .”

3. On July 31, 2006, the Examining Attorney refused registration of the ROHAN Applications under Section 2(e)(4), on the ground that ROHAN is primarily merely a surname.

4. On January 28, 2007, Registrant filed a Response to Office Action with the PTO for each of the ROHAN Applications, in which Registrant stated that Registrant was “not aware of any significance of the term ROHAN in the trade or industry, apart from the trademark significance of the term,” and was “not aware of any recognized meaning of the term ROHAN, apart from its trademark significance.”

5. On or about January 28, 2007, SunnyYNK Inc. submitted a change of name document for each of the ROHAN Applications with the PTO alleging a change of name from SunnyYNK Inc. to YNK Korea Co. Ltd. The name change documents were received and recorded with the PTO on January 28, 2007.

6. On February 20, 2007, the Examining Attorney issued a Final Action refusing registration of the ROHAN Applications under Section 2(e)(4), on the ground that ROHAN is primarily merely a surname.

7. On or about August 5, 2007 (“Supplemental Register Date”), in response to the Final Action, Registrant notified the PTO that it wished to amend its ROHAN Applications to seek

registration on the Supplemental Register under Section 44(e), based on Registrant's trademark registrations in its home country, rather than use in commerce in the United States. Registrant submitted a copy and English translation of Korean Registration No. 0605437 for the word ROHAN in Class 9, for "Computer game software, Computer game programs, and Computer operating programs." Registrant also submitted a copy and English translation of Korean Registration No. 0111039 for the word ROHAN in Class 41, for "Providing online computer games."

8. On October 30, 2007, both of the ROHAN Applications matured into registration on the Supplemental Register. The ROHAN Word Application was assigned Registration No. 3,328,132, for the following goods in International Class 9: "Computer game software; computer operating programs; and computer game programs." The ROHAN Design Application was assigned Registration No. 3,328,133 for the following services in International Class 41: "Providing online computer games" (collectively, "Registrant's Goods"). Registrant is listed as the owner of the Registered Marks on the Supplemental Register.

9. In the early 1930s, the late Professor J.R.R. Tolkien wrote a novel called *The Hobbit, or There and Back Again* (hereinafter, "*The Hobbit*"). *The Hobbit* was first published in Great Britain in November 1937 and in the United States in January 1938. *The Hobbit* was an instant success and underwent over 20 printings before its sequel was published 16 years later.

10. The sequel to *The Hobbit* was published as a trilogy known as *The Lord of the Rings*. *The Lord of the Rings* trilogy comprises three individual volumes entitled *The Fellowship of the Ring*, *The Two Towers*, and *The Return of the King* (collectively, "*The Lord of the Rings* trilogy"). *The Fellowship of the Ring* was first published in the United States in October 1954. *The Two Towers* was first published in the United States in April 1955. The final volume of the trilogy, *The Return of the King*, was first published in the United States in January 1956.

11. *The Hobbit* and *The Lord of the Rings* trilogy are herein collectively referred to as the "Tolkien Works."

12. Each of the Tolkien Works is currently in print in the United States, and has been in print continuously since long before Registrant's Filing Date and Supplemental Register Date. Each of the Tolkien Works became enormously popular soon after publication. By the time paperback editions of the Tolkien Works were published in the mid-1960s, the books had grown from mere bestsellers to cultural phenomena. By the 1970s, the Tolkien Works were embraced

by adolescents and college students, as well as their parents and grandparents.

13. To date, more than 45 million copies of the Tolkien Works have been sold in the United States. In an April 2008 poll conducted by Harris Interactive, the Tolkien Works were ranked third among Americans' all-time favorite books. The Tolkien Works have been translated into over 35 different languages and have delighted readers around the world, selling more than 100 million copies worldwide. In short, the Tolkien Works are among the most well-known, popular and beloved series of literary works of all time, and have been so since long before Registrant's Filing Date and Supplemental Register Date.

14. The Tolkien Works are set in Professor Tolkien's imaginary world of MIDDLE-EARTH, which is inhabited by Professor Tolkien's own invented characters and includes Professor Tolkien's own fanciful places, objects, and events.

15. The *Lord of the Rings* trilogy follows the adventures of a company of several characters called The Fellowship, which includes, among others, the human character Aragorn, the Hobbit characters Bilbo and Frodo, and the wizard character Gandalf, throughout the various lands of Middle-earth (including ROHAN, Gondor and Mordor), in an attempt to destroy the magical One Ring and to defeat the Dark Lord Sauron, as well as his minion, the evil wizard Saruman.

16. The land of ROHAN plays a critical role in the plot of *The Lord of the Rings*. ROHAN is a grassland in Middle-Earth which lies north of its ally Gondor and north-west of Mordor, the realm of Sauron, their enemy. ROHAN is inhabited by the Rohirrim, a free people well-known for their horses and cavalry. In *The Lord of the Rings*, the War of the Ring started in ROHAN when Saruman invaded ROHAN, initially defeating the Rohirrim. After several battles, Saruman's army of Orcs was ultimately defeated at the Battle of the Hornburg, where the Ents and Huorns (sentient, walking trees) came to the rescue of ROHAN. Later, at the climax of the story, the free people of ROHAN come to the aid of Gondor just when it seems as if Sauron's forces are going to defeat the city and thereby conquer the last group of free people in Middle-earth.

17. The term ROHAN is essential to the mythology of the Tolkien Works, and is inextricably associated with Professor Tolkien's themes of bravery and the war against evil.

18. Due to the enormous following enjoyed by the Tolkien Works and the important role played by the land of ROHAN in the Tolkien Works, the term ROHAN has become widely

known among the consuming public as an important ingredient of the Tolkien mythology, and has come to symbolize the Tolkien Works, the derivative works based on them, and the distinctive fantasy characters, places, objects and events created by Professor Tolkien therein.

19. Since the late 1960s, Petitioner and its predecessors in interest have held the right to use, and license others to use, marks related to the Tolkien Works, including without limitation the titles of each of the Tolkien Works and the names and visual representations of the characters, places, objects, and events described in the Tolkien Works, including without limitation characters such as Frodo, Aragorn, and Gandalf; objects such as Mithril, the One Ring, and Palantir; and places such as ROHAN, Mordor, and Middle-earth (collectively, the “Tolkien Marks”). Petitioner also holds exclusive, worldwide theatrical motion picture and live stage production rights in and to the Tolkien Works, as well as the right to, or to license others the right to, sell merchandise and provide services in connection with such film and stage productions.

20. For example, in the mid-1970s, Petitioner produced an animated film version of *The Lord of the Rings* directed by Ralph Bakshi (the “Bakshi Film”), which features many scenes set in ROHAN. The Bakshi Film’s initial theatrical release was in 1978, and it remains in distribution today. The Bakshi Film garnered extensive publicity and commendation, including a Golden Globe® award nomination. The Bakshi Film has grossed over \$30 million in the United States since its release, and has remained commercially available for home viewing since its theatrical release. Petitioner engaged in significant advertising and merchandising efforts in connection with the Bakshi Film.

21. More recently, but still well before Registrant’s Filing Date and Supplemental Register Date, Petitioner licensed its film and certain related merchandising rights related to the Tolkien Works to New Line Cinema Corporation (“New Line”). New Line has released a total of three live action, special effects-packed films based on *The Lord of the Rings*, including *The Lord of the Rings: The Fellowship of the Ring*, *The Lord of the Rings: The Two Towers*, and *The Lord of the Rings: The Return of the King* (collectively, the “New Line Film Trilogy”).

22. Like the books and the Bakshi Film, the New Line Film Trilogy features Professor Tolkien’s fanciful characters, objects, events, and places, including the land of ROHAN, thereby perpetuating the mythology of the Tolkien Works, and the importance of ROHAN within the mythology. In fact, much of action in the second film in the trilogy, *The Two Towers*, takes

place in ROHAN, and characters from ROHAN appear in all three films.

23. At least as early as July 1999, well before Registrant's Filing Date and Supplemental Register Date, New Line began to heavily publicize the highly-anticipated New Line Film Trilogy, including through press releases and through widespread distribution of theatrical trailers in movie theaters and on the Internet.

24. The New Line Film Trilogy has been one of the most acclaimed and successful film series of all time. Each film in the New Line Film Trilogy is among the top grossing films of all time in the United States and abroad.

25. The first film of the New Line Film Trilogy, *The Lord of the Rings: The Fellowship of the Ring*, was theatrically released in December 2001, and grossed over \$47 million in its opening weekend. The film has grossed over \$313 million in the United States, and over \$867 million worldwide. *The Lord of the Rings: The Fellowship of the Ring* received four Golden Globe® award nominations, including Best Picture (Drama) and Best Director, and 13 Academy Award® nominations, including nominations for Best Picture and Best Supporting Actor, and in 2002 won four awards.

26. The second film of the New Line Film Trilogy, *The Lord of the Rings: The Two Towers*, was theatrically released in December 2002, and grossed over \$62 million in its opening weekend. The film has grossed approximately \$341 million in the United States, and over \$926 million worldwide. *The Lord of the Rings: The Two Towers* received two Golden Globe® award nominations, including Best Picture (Drama) and Best Director, six Academy Award® nominations, including a nomination for Best Picture, and in 2003 won two awards.

27. The third film of the New Line Film Trilogy, *The Lord of the Rings: The Return of the King*, was theatrically released in December 2003, and grossed over \$72 million in its opening weekend. The film has grossed approximately \$377 million in the United States, and more than \$1 billion worldwide. It is currently ranked second in all-time worldwide box office receipts by the Internet Movie Database (and all three films are among the top 15 films on that list). *The Lord of the Rings: The Return of the King* received four Golden Globe® award nominations and won four awards in 2004, including Best Picture (Drama), Best Director, Best Original Score and Best Original Song. *The Lord of the Rings: The Return of the King* received eleven Academy Award® nominations and won eleven awards in 2004, including those in the categories of Best Picture, Best Director and Writing (Adapted Screenplay).

28. New Line recently announced its intention to produce and distribute two more major motion pictures to be based on the Tolkien Works.

29. Beginning in at least the mid-1970s, Petitioner established, and has continued to maintain, a successful worldwide merchandising program to offer goods and services based on the Tolkien Works. As part of this program, Petitioner and its licensees have aggressively promoted the Tolkien Marks through numerous channels of trade. Petitioner has used, and licensed others to use, the Tolkien Marks in connection with a wide variety of commercial goods and services, including, without limitation: toys, puzzles, role-playing games, board games, computer and video games, restaurant services, retail services, online services, jewelry, swords and other weapons, objects d'art, chess sets, metal miniature figures, calendars, comic books, posters, tarot cards, phonograph records, CDs, DVDs, dolls, clothing, souvenir merchandise, and fan club services, among many others.

30. Petitioner has used, and has licensed others to use, the Tolkien Marks continually since long before Registrant's Filing Date and Supplemental Register Date. Petitioner and its licensees continue to expand the licensing program for the Tolkien Marks to additional goods and services.

31. Petitioner has used and/or licensed others to use the ROHAN mark continuously, since well before Registrant's Filing Date and Supplemental Register Date, in connection with goods and services that include, but are not limited to, collectibles, action figures, puzzles, maps, jewelry, role-playing games, table-top games, video games, and computer games.

32. Separately, and in addition to Petitioner's rights based on use of the ROHAN mark in commerce, Petitioner has protectable rights in ROHAN as a key element in the mythology of *The Lord of the Rings*. The land of ROHAN and its people are featured prominently in many products sold under the Tolkien Marks. Because the Tolkien Works fall within the fantasy genre, Petitioner's most successful and popular licensed products have been fantasy games, including role-playing, table-top, video, computer, and Internet-based games.

33. In 1984, Petitioner licensed Iron Crown Enterprises ("ICE") to use the Tolkien Marks on role-playing games. ICE subsequently produced many modules for its popular Middle-earth Role-Playing Game. In or around 1985, ICE released a game module titled RIDERS OF ROHAN, as well as a RIDERS OF ROHAN map supplement for the game. These games were extremely popular for many years and remain in active circulation on the secondary

market today.

34. On April 26, 2000, and October 4, 2001, Petitioner licensed Decipher, Inc. to use the Tolkien Marks on trading card games and role-playing games, respectively. Decipher released a role-playing game, a trading card game, and an Internet-based digital trading card game based on the Tolkien Works. These games prominently feature ROHAN and the people of ROHAN.

35. On April 5, 2001, Petitioner licensed the use of the ROHAN mark on interactive video game software to Vivendi Universal Games, Inc., which released The Lord of the Rings: War of the Ring in 2003, a game which prominently features ROHAN and its army. Petitioner's licensee Turbine, Inc. later took over this license and spent many years developing a massively multi-player online game, which was released in early 2007. This game has won many industry awards.

36. On August 31, 2001, Petitioner licensed the use of the Tolkien Marks to Games Workshop Group PLC ("Games Workshop") for tabletop war games. ROHAN is prominently featured in Games Workshop's games; for example, consumers may purchase game models such as DEFENDERS OF ROHAN, RIDERS OF ROHAN, WARRIORS OF ROHAN, ROHAN OUTFRIDERS, and others. The game also features a WRATH OF ROHAN sequence and instructions on how to build a ROHAN watchtower and house.

37. Since August 29, 2000, Electronic Arts, Inc. has been licensed to use the ROHAN mark and other Tolkien Marks. Electronic Arts has released multiple video games based on the Tolkien Works that feature ROHAN and its army, including The Lord of the Rings: The Two Towers, released in 2002; The Lord of the Rings: The Return of the King, released in 2003; The Battle for Middle-Earth, released in 2004; The Lord of the Rings: The Third Age, released in 2004; The Lord of the Rings: Tactics, released in 2005; and The Lord of the Rings: The Battle for Middle-Earth II, released in March 2006.

38. As a result of the enormous following enjoyed by the Tolkien Works over many decades and their broad dissemination throughout virtually all types of media, including but not limited to the Bakshi Film, the New Line Film Trilogy, and computer games, the term ROHAN has come to be recognized by the consuming public as an ingredient or symbol of Professor Tolkien's mythology, and is strongly associated with the Tolkien Works and the goods and services of Petitioner and Petitioner's licensees.

39. On information and belief, Registrant sought to capitalize on the mythology of the

Tolkien Works by adopting the Registered Mark, in spite of Petitioner's rights in the Tolkien Works, Petitioner's long and continuous use of the ROHAN mark and other Tolkien Marks, and the strong public perception of ROHAN as an ingredient that has come to symbolize the Tolkien Works and the goods and services of Petitioner and Petitioner's licensees.

40. On information and belief, Registrant adopted the Registered Mark with knowledge of Petitioner's and its predecessors in interest's prior use of and trademark rights in the ROHAN mark and other Tolkien Marks, and with the intention of unfairly trading upon the goodwill associated with Petitioner's Tolkien Marks. Registrant's use of the ROHAN mark evokes the mythology of the Tolkien Works and trades on the goodwill associated with Petitioner's Tolkien Marks.

41. Petitioner owns Japanese Registration No. 4597129, registered on August 23, 2002, for the ROHAN mark in Classes 9, 16, 28, and 41 for various game products and services, including "providing interactive multi-player computer games via the Internet." Evidencing Registrant's prior knowledge of Petitioner's prior use and trademark rights in the ROHAN Mark, Registrant released its computer game in Japan as "R.O.H.A.N.," with a new subtitle "Renaissance of Human and Nature."

42. Registrant's use of the Registered Mark in commerce irreparably damages Petitioner's exclusive right to use, promote, and license the Tolkien Marks, including ROHAN, in connection with goods and services, and computer games in particular. Such damage to Petitioner and its licensees will be continuing, as the public is likely to believe that Petitioner is sponsoring or endorsing Registrant's Goods, which are in direct competition with Petitioner's licensed goods and services.

43. Deficiencies or faults in the quality of the Registrant's Goods are likely to reflect negatively upon, tarnish, and seriously injure the reputation that Petitioner has established for the wide variety of goods and services produced or licensed by Petitioner under or in association with the Tolkien Marks. This is likely to result in loss of revenues to Petitioner and damage to its reputation.

#### **FIRST GROUND FOR RELIEF**

#### **NOT ENTITLED TO REGISTRATION NO. 3,328,133 UNDER SECTION 44(E)**

44. Petitioner incorporates by reference paragraphs 1 through 43 as if fully set forth

herein.

45. Registration No. 3,328,133 is a registration for the design mark ROHAN in Class 41, for “Providing online computer games.”

46. Korean Registration No. 0111039 is a registration for the word ROHAN in Class 41, for “Providing online computer games.”

47. Under Section 44(e) of the Lanham Act and T.M.R.P. 2.51(c), the appearance and format of a U.S. registration mark must be a substantially exact representation of the mark as it appears in the foreign registration.

48. The appearance and format of Registration No. 3,328,133 (the ROHAN design mark) is not a substantially exact representation of Korean Registration No. 0111039 (the ROHAN word mark).

49. Registrant is not entitled to Registration No. 3,328,133.

## **SECOND GROUND FOR RELIEF**

### **LIKELIHOOD OF CONFUSION UNDER 15 U.S.C. §1052(d)**

50. Petitioner incorporates by reference paragraphs 1 through 49 as if fully set forth herein.

51. Petitioner has used the Tolkien Marks, including the ROHAN mark, in United States commerce since long before Registrant’s Filing Date and Supplemental Register Date.

52. Petitioner and its licensees offer a wide range of goods and services in connection with the Tolkien Marks, including computer and video games, role-playing games, and other goods related to Registrant’s Goods.

53. The term ROHAN has come to be recognized by the consuming public as an ingredient or symbol of Professor Tolkien’s mythology, and is strongly associated with the Tolkien Works. As such, Petitioner’s ROHAN mark is distinctive and serves to identify goods and services created, distributed, and/or licensed by or on behalf of Petitioner under the Tolkien Marks, particularly with respect to games such as computer games.

54. The Registered Marks are identical to Petitioner’s ROHAN mark in sight, and are identical in sound and commercial impression.

55. Registrant’s Goods are identical to those offered by Petitioner’s licensees, and are in direct competition with them.

56. The use by Registrant of the Registered Marks for Registrant's Goods has created and is likely to continue to create the erroneous impression that Registrant's Goods originate with, are sponsored or promoted by, or are otherwise associated with Petitioner or the motion pictures, games, merchandise, or other goods and services that Petitioner has produced and licensed.

57. Registrant's continued registration and use of the Registered Marks in connection with Registrant's Goods is likely to cause confusion, mistake, or deception in the minds of prospective consumers as to the origin, sponsorship, or approval of Registrant's Goods, within the meaning of Section 2 of the Lanham Act, 15 U.S.C. §1052(d).

### **THIRD GROUND FOR RELIEF**

#### **FRAUD**

58. Petitioner incorporates by reference paragraphs 1 through 57, as if fully set forth herein.

59. In the formal application papers purportedly filed by Registrant under notice of 18 U.S.C. §1001, it was stated that Registrant "believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive. . . ."

60. Registrant made the statement in Paragraph 59 with the knowledge and belief that said statement was false.

61. In Registrant's Response to Office Action filed with the PTO on January 28, 2007, Registrant stated that Registrant was "not aware of any significance of the term ROHAN in the trade or industry, apart from the trademark significance of the term," and was "not aware of any recognized meaning of the term ROHAN, apart from its trademark significance."

62. Registrant made the statement in Paragraph 61 with the knowledge and belief that said statement was false.

63. When Registrant made the statements in Paragraphs 59 and 61, Registrant was fully aware of Petitioner's use of and rights in the ROHAN mark as of Registrant's Filing Date, and either believed that a likelihood of confusion would result from Registrant's use of the marks or

had no reasonable basis for believing otherwise.

64. The false statements in Paragraphs 59 and 61 were made by Registrant with the intent to induce authorized agents of the PTO to grant said registrations. Reasonably relying upon the truth of said false statements, the PTO did, in fact, grant said registrations to Registrant on the Supplemental Register. Registrant thus obtained the registrations by fraud.

65. Petitioner was damaged by the false statements in Paragraphs 59 and 61 and the registrations issued in reliance thereon in that Petitioner's continued and legal use of the ROHAN mark will be impaired by the continued registrations of the ROHAN mark to Registrant.

WHEREFORE, Petitioner respectfully requests that this Petition be granted in favor of Petitioner and that Registration Nos. 3,328,132 and 3,328,133 be cancelled.

By and through Petitioner's attorney, the PTO is authorized by Carole F. Barrett, Attorney for Petitioner, to charge the requisite filing fee of \$600.00 to the Deposit Account of Howard Rice Nemerovski Canady Falk & Rabkin, Account No. 08-2792. Please deduct any additional fees that may be due, or credit any overpayment, to the same Deposit Account.

DATED: July 28, 2008.

CAROLE F. BARRETT  
SARAH J. GIVAN  
HOWARD RICE NEMEROVSKI  
CANADY FALK & RABKIN  
A Professional Corporation  
Three Embarcadero Center, Seventh Floor  
San Francisco, California 94111  
Telephone: 415/434-1600  
Facsimile: 415/217-5910



Carole F. Barrett

Attorneys for Petitioner  
THE SAUL ZAENTZ COMPANY  
d.b.a. TOLKIEN ENTERPRISES

**PROOF OF SERVICE BY MAIL**

The undersigned declares and says as follows: my business address is Three Embarcadero Center, Seventh Floor, San Francisco, CA 94111-4024. I am employed in the City and County of San Francisco; I am over the age of 18 years, and I am not a party to this cause. I am readily familiar with this business' practices for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that a sealed envelope is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

I served the within **CONSOLIDATED PETITION FOR CANCELLATION OF REGISTRATION NOS. 3,328,132 and 3,328,133** to Registrant at its address of record and through its domestic representative at its address of record:

**YNK Korea Co. Ltd.  
1499-5 Seocho-Dong, Seocho-Gu  
Seoul, Korea, Republic of 137-070**

**Thomas W. Cole  
Roberts, Mlotkowski & Hobbes  
7918 Jones Branch Drive, Suite 500  
McLean, VA 22201**

by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, for deposit in the United States mail for collection and mailing on this day following ordinary business practices of Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration is executed in San Francisco, California, this 27th day of July, 2008.

  
\_\_\_\_\_

By: