

ESTTA Tracking number: **ESTTA239306**

Filing date: **09/26/2008**

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	Jewelry by S.A. Gauthier, Inc.		
Entity	Corporation	Citizenship	Arizona
Address	4211 North Marshall Way Scottsdale, AZ 85251 UNITED STATES		

Attorney information	Christy L.E. Hubbard Lewis and Roca LLP 40 North Central Avenue, Suite 1900 Phoenix, AZ 85004 UNITED STATES trademarks@lrlaw.com Phone:6022625311		
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Registration Subject to Cancellation

Registration No	3196976	Registration date	01/09/2007
International Registration No.	NONE	International Registration Date	NONE
Registrant	Montres Romain Gauthier SA Grande Rue 19 CH-1347 Le Sentier SWITZERLAND		

Goods/Services Subject to Cancellation

Class 014. All goods and services in the class are cancelled, namely: Timepieces

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77354477	Application Date	12/18/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GAUTHIER		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 035. First use: First Use: 2002/07/24 First Use In Commerce: 2002/07/24 Retail store services
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U.S. Application No.	77354468	Application Date	12/18/2007
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Registration Date	NONE	Foreign Priority Date	NONE
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Word Mark	GAUTHIER
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 014. First use: First Use: 2002/07/24 First Use In Commerce: 2002/07/24 Jewelry
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Attachments	77354477#TMSN.jpeg (1 page)(bytes) 77354468#TMSN.jpeg (1 page)(bytes) gau6976cancel.pdf (4 pages)(108224 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/CHRISTY L.E. HUBBARD/
Name	Christy L.E. Hubbard
Date	09/26/2008

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

Jewelry by S.A. Gauthier, Inc.,)	
)	
)	Cancellation No. _____
)	
vs.)	Mark: ROMAIN GAUTHIER
)	
)	Registration No. 3,196,976
Montres Romain Gauthier SA)	
)	Date Registered: October 30, 2007
)	

PETITION TO CANCEL

Petitioner, Jewelry by S.A. Gauthier, Inc., (“Petitioner”) believes that it is being damaged by the continued registration of the above-identified mark, and hereby petitions to cancel Registration No. 3,196,976.

Petitioner is an Arizona corporation located at 4211 North Marshall Way, Scottsdale, Arizona. Petitioner believes that it has been damaged, is currently being damaged, and will continue to be damaged by the continued registration of U.S. Registration No. 3,196,976 and hereby petitions to cancel registration of said trademark.

Patent and Trademark Office records indicate that Montres Romain Gauthier SA (“Registrant”) is a corporation of Switzerland located at Grande Rue 19 CH-1347 Le Sentier, Switzerland.

The grounds for the Petition to Cancel are as follows:

1. Petitioner has adopted and used in commerce the trademark GAUTHIER and JEWELRY BY GAUTHIER in connection with jewelry, the custom design of jewelry and the retail sale of jewelry in United States commerce since at least as early as 2002 and 1989, respectively.

2. Upon information and belief, Registrant has a registration for the mark ROMAIN GAUTHIER for “timepieces”, Reg. No. 3,196,976, which issued on January 9, 2007 based on its foreign rights in International Registration No. 0865365.

3. Registrant’s foreign-based filing for ROMAIN GAUTHIER was made on October 4, 2005, years after Petitioner’s first use of its GAUTHIER and JEWELRY BY GAUTHIER marks in the United States.

4. Petitioner is the owner of two federal trademark applications for GAUTHIER, Serial Nos. 77/354,477 and 77/354,468, for retail store services and for jewelry, respectively.

5. The US Patent and Trademark Office has cited the ROMAIN GAUTHIER international filing against Petitioner’s GAUTHIER applications.

6. Registrant’s use and registration of the ROMAIN GAUTHIER mark in connection with timepieces infringes upon the Petitioner’s rights in its GAUTHIER and JEWELRY BY GAUTHIER marks, falsely designates Registrant’s goods as originating from Petitioner and creates a likelihood of confusion as to the source of origin of Registrant’s goods.

7. Registrant is not entitled to continued registration of its ROMAIN GAUTHIER mark because it is likely to cause confusion, or mistake, or to deceive consumers as to the source of each party’s services in violation of 15 U.S.C. §1052(d). Additionally, this registration may cause consumers to infer the existence of an affiliation, connection or association between the parties when none exists.

8. Based on the foregoing, Registration No. 3196976 should be cancelled under § 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

Requested Relief

WHEREFORE, Petitioner believes that it is being damaged and will continue to be

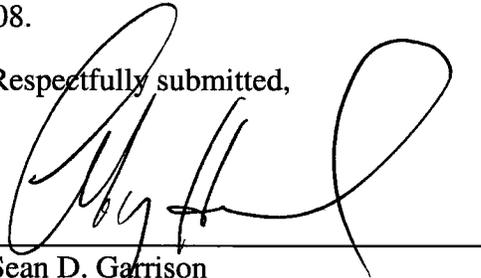
damaged by the continued registration of the mark covered by Registration No. 3196976 and therefore prays that said Registration be canceled and that this Petition to Cancel be sustained in favor of Petitioner.

Petitioner has served this Petition to Cancel upon Registrant in accordance with 37 C.F.R. §2.111(b) and hereby includes a Certificate of Service.

Please direct all correspondence to Christy L.E. Hubbard, Esq., Lewis and Roca, LLP, 40 North Central Avenue, Phoenix, Arizona 85004-4429.

Dated this 26th day of September, 2008.

Respectfully submitted,



Sean D. Garrison
Christy L.E. Hubbard
LEWIS AND ROCA LLP
40 North Central Avenue
Phoenix, Arizona 85004-4429
(602) 262-5311

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Petition to Cancel was served by International Express Mail, Postage Prepaid, to the following:

Montres Romain Gauthier SA
Grande Rue 19 CH-1347
Le Sentier, Switzerland

on this 20th day of September, 2008.



Karen Wildman

With a copy of the foregoing to:

David R. Haarz
11730 Plaza America Drive
Suite 600
Reston, VA 20190