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Filing date: **06/24/2009**

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	ATWATER KENT MANUFACTURING COMPANY		
Entity	Corporation	Citizenship	Delaware
Address	101 Springer Building 3411 Silverside Road Wilmington, DE 19810 UNITED STATES		

Attorney information	Jason M. Drangel Epstein Drangel Bazerman & James, LLP 60 East 42nd Street, Suite 820 New York, NY 10165 UNITED STATES mail@ipcounselors.com Phone:(212) 292-5390
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Registration Subject to Cancellation

Registration No	3366870	Registration date	01/08/2008
Registrant	Leveillee, Michael D. 14 Clarendon Road Auburn, MA 01501 UNITED STATES		

Goods/Services Subject to Cancellation

Class 007. First Use: 2006/10/02 First Use In Commerce: 2006/10/02 All goods and services in the class are cancelled, namely: generators, namely, electric generators; starters for motors and engines; and ignition coils
Class 009. First Use: 2005/12/12 First Use In Commerce: 2005/12/12 All goods and services in the class are cancelled, namely: condensers; fuel level guages; oil level sensors; fuel tank sending units in the nature of float-type resistance-based fuel tank level sending units and hydrostatic sending units

Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
Consists of or comprises a name, portrait, or signature of a living individual without written consent, or the name, portrait, or signature of a deceased president without the written consent of the surviving spouse	Trademark Act section 2(c)
<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
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services	Trademark Act section 14

on or in connection with which the mark is used.	
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ATWATER KENT MANUFACTURING COMPANY		
Goods/Services	as trade and/or corporate name		

Attachments	DOC062409atwater.pdf (6 pages)(121800 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	/William C. Wright/
Name	William C. Wright
Date	06/24/2009

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

In the Matter of Reg. No. 2,952,925 and 3,366,870
for the Trademark ATWATER KENT (Cls. 7 & 9), in
the name of Michael D. Leveillee d/b/a J.F. Sullivan Co. & Atwater Kent Manufacturing Company

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ATWATER KENT MANUFACTURING	:	
COMPANY	:	
	:	Cancellation No.
Petitioner,	:	
v.	:	
	:	
MICHAEL D. LEVEILLEE D/B/A	:	
J.F. SULLIVAN CO. & ATWATER KENT	:	
MANUFACTURING COMPANY	:	
Respondent.	:	
	:	
-----	X	

PETITION FOR CANCELLATION

Petitioners, Atwater Kent Manufacturing Company (“Petitioner”), a Delaware company, with a business address of 101 Springer Building, 3411 Silverside Road, Wilmington, DE 19810, believes that it is or will be damaged by the continued registration of the trademark ATWATER KENT, as shown in Registration Nos. 2,952,925 and 3,366,870, issued on May 17, 2005 and January 8, 2008 respectively, and hereby petition to cancel same.

As grounds for cancellation, Petitioners allege that:

1. Respondent, Michael D. Leveillee, is an individual and citizen of the United States and is d/b/a J.F. Sullivan Co. & Atwater Kent Manufacturing Company with a business address of 12 Jacques Street, Worcester, Massachusetts 01603-1926 (“Respondent”).

2. Petitioner is a Delaware company founded in 1919 [CORRECT?] and run by Arthur Atwater Kent ("Atwater Kent").
3. Atwater Kent invented the closely timed ignition system, and operated the world's largest radio factory in Pennsylvania.
4. Atwater Kent was always interested in automobiles and, particularly, in the means of igniting internal combustion engines. He patented the contactor, a breaker point mechanism, and the distributor to enable the use of a single coil. Income from his ignition systems enabled Atwater Kent to enter the radio business with a fully equipped manufacturing facility.
5. Atwater Kent was also very careful of Respondent's reputation. Petitioner's radios were of very high quality and reliability with strong customer appeal.
6. By the 1930s, Petitioner released a new cycle of approximately 15 radio models each year. In the middle thirties Atwater Kent recognized the changing market for radio receivers. His business was based on moderately priced consoles with a tolerance for high-quality table models. However, he did not accept the market for cheap sets and preferred to stop selling radios rather than compromise his name and reputation.
7. In 1936 Kent closed the factory and moved to California where he spent a well earned retirement until his illness and death in 1949.
8. Petitioner has always used the Atwater Kent Manufacturing Company trade name and corporate name to identify its goods and services. Petitioner is now run by the descendants of Atwater Kent.
9. Petitioner exists for a number of reasons, including, most notably to protect

- the history and good name of the Petitioner and its founder Atwater Kent.
10. Recently, Petitioner became aware that Respondent is conducting business under the trade name Atwater Kent Manufacturing Company.
 11. Respondent makes false claims to both an association with both Atwater Kent himself, and Respondent. For instance, Respondent claims on its website that “originally founded in 1895, we still hand-craft specific items for your automotive or radio collection.” Respondent also provides a complete history of the founder (including photos) and the company. See accompanying pages from Respondent’s website attached hereto as Exhibit 1.
 12. Respondent claims to manufacture and sell radio and automotive parts as did Petitioner and Atwater Kent.
 13. This association is unauthorized and likely to cause confusion and mislead consumers in the marketplace as to the authenticity and reliability of goods originating from Respondent.
 14. This association is unauthorized and likely to cause confusion and mislead consumers in the marketplace as to the source of goods originating from a Respondent’s nearly identical trade name as used by Petitioner.
 15. Further, Respondent’s actions is likely to damage the good name and reputation of Petitioner and its founder Atwater Kent.
 16. On February 26, 2002, Respondent filed a U.S. trademark application for ATWATER KENT for goods in Class 9, with the Respondent herein identified as the owner of the trademark. The registration issued on May 17, 2005 as Reg. No. 2,952,925.

17. On November 23, 2005, Respondent filed a U.S. trademark application for ATWATER KENT for goods in Class 7 & 9, with the Respondent herein identified as the owner of the trademark. The registration issued on January 8, 2008 as Reg. No. 3,366,870.
18. Respondent is neither the owner nor exclusive licensee of ATWATER KENT trademark or trade name.
19. Respondent was not and is not authorised to register a trademark containing Atwater Kent's name.
20. Respondent fraudulently applied to register the trademark ATWATER KENT without authorization to do so. If the trademark were to be registered at all in 2005 or 2008 it should have been registered in the name of the Petitioner, the owner of the Atwater Kent trademark, and Atwater Kent Manufacturing Company corporate and trade name.
21. Respondent knew, at the time it filed its trademark application that the ATWATER KENT trademark rights ultimately lie with the beneficiary/assignees of the estate of Atwater Kent.
22. Respondent fraudulently applied to register the trademark ATWATER KENT with knowledge that it did not own or have the exclusive right to use said mark in commerce.
23. Respondent's registrations of ATWATER KENT falsely suggests a connection with and/or brings into disrepute the name, trade name and

identity of Atwater Kent and Petitioner.

24. Respondent's fraudulent and unauthorized registration of ATWATER KENT interferes with Petitioner's right to use, register and license the ATWATER KENT trademark, corporate name and trade name.
25. For the foregoing reasons, Petitioner believe that it is and will continue to be damaged by Reg. Nos. 2,952,925 and 3,366,870, and therefore files this petition to cancel same.

WHEREFORE, Petitioners, by their undersigned attorney, pray that Registration Nos. 2,952,925 and 3,366,870, be cancelled, and that Petitioners may have all such further relief deemed to be necessary and just by the Trademark Trial and Appeal Board.

This notice is filed electronically and accompanied by a payment of \$900 filing fee.

Respectfully submitted,

**EPSTEIN DRANGEL BAZERMAN &
JAMES, LLP**
Attorneys for Petitioner

Dated:

6/23/09

By: _____
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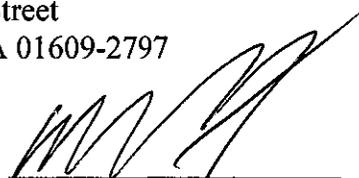
Our Ref: 1108-003

CERTIFICATE OF MAILING

I hereby certify that the foregoing Petition for Cancellation is being deposited on this 24th day of June, 2009 via the U.S.P.T.O's Electronic System for Trademark Trials and Appeals and by mail to:

Gerry A. Blodgett
Blodgett & Blodgett, P.C.
43 Highland Street
Worcester MA 01609-2797

By:



William C. Wright