

ESTTA Tracking number: **ESTTA329280**

Filing date: **01/28/2010**

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

Proceeding	92051149
Party	Plaintiff Atwater Kent Manufacturing Company
Correspondence Address	Jason M. Drangel Epstein Drangel Bazerman & James, LLP 60 East 42nd Street, Suite 820 New York, NY 10165 UNITED STATES mail@ipcounselors.com
Submission	Other Motions/Papers
Filer's Name	William C. Wright
Filer's e-mail	mail@ipcounselors.com
Signature	/William C. Wright/
Date	01/28/2010
Attachments	DOC012810atwater.pdf (13 pages)(286404 bytes)

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

In the Matter of Reg. No. 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

-----	-X	
	:	
ATWATER KENT MANUFACTURING	:	
COMPANY	:	
	:	Cancellation No. 92051149
Petitioner,	:	
v.	:	
	:	
MICHAEL D. LEVEILLEE D/B/A	:	
J.F. SULLIVAN CO. & ATWATER KENT	:	
MANUFACTURING COMPANY	:	
Respondent.	:	
	:	
-----	-X	

FIRST AMENDED 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 No. 3,366,870, issued on January 8, 2008, 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 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 are 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 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 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, trademark, trade name, corporate name and identity of Atwater Kent and Petitioner.

24. Respondent's 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. Pursuant to Section 14(3), Respondent is using the ATWATER KENT trademark to misrepresent the source of the goods/services in connection with which the ATWATER KENT mark is used. Respondent has deliberately sought to pass off its goods as those of Petitioner on its website, and in advertising and promotions indicating an association with the founder Atwater Kent and Petitioner itself.
26. For the foregoing reasons, Petitioner believe that it is and will continue to be damaged by Reg. No. 3,366,870, and therefore files this petition to cancel same.

WHEREFORE, Petitioners, by their undersigned attorney, pray that Registration No. 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:

1/29/10.

By: _____

Jason M. Drangel
William C. Wright
Lincoln Building
60 East 42nd Street, Suite 820
New York, New York 10165
Tel.: (212) 292-5390
Fax: (212) 292-5391

Our Ref: 1108-003

CERTIFICATE OF MAILING

I hereby certify that the foregoing Amended Petition for Cancellation is being deposited on this 29th day of January, 2010 via the U.S.P.T.O's Electronic System for Trademark Trials and Appeals and by mail to:

Peter Nils Baylor
Nutter McClennen & Fish LLP
World Trade Center West
155 Seaport Boulevard, Boston, MA 02210

By: _____

William C. Wright

EXHIBIT 1

Atwater Kent Manufacturing Company

Home

Products

Services

History



*"There is no substitution for
quality, craftsmanship, and
dependability."*

(Arthur) Atwater Kent

The Atwater Kent® Manufacturing Company is a traditional manufacturer and re-builder of specialized automotive electrical components and old time vacuum tube radios.

Originally founded in 1895, we still hand-craft specific items for your automotive or radio collection, much as was done a century ago. At Atwater Kent®, we fully understand your concerns for the highest quality and correctness of application.

Our hands-on approach to your manufacturing needs sets us distinctly apart from today's mass production and offshore outsourcing. We service the specialty needs of individuals, museum curators and automobile representatives.

We look forward to answering your questions.

Telephone

(508)792-9500

Hours of Operation

Monday - Friday 9^{AM} - 5^{PM} (EST)

Address

12 Jacques Street Worcester, MA, 01603

Atwater Kent is a registered trademark of the Atwater Kent Manufacturing Company.



Free Web Counter

Copyright © 2008 Atwater Kent Manufacturing Company
Last modified: 08/15/08

Atwater Kent Manufacturing Company

[Home](#)[Products](#)[Services](#)[History](#)

Company History

For the past thirty plus years of it's long history, the Atwater Kent® Manufacturing Company has been aggressively involved in the development of rare and hard to find automotive products.

In the mid 1970's, the Atwater Kent® Manufacturing Company was the first to implement a program for the full manufacture and rebuilding of fuel tank sending units. This has allowed Atwater Kent® to provide service to such well known firms as General Motors, Ford, Chrysler Corporation, the Charles P. Chrysler Museum, and Rolls Royce of Beverly Hills.

The late 1980's provided the Atwater Kent® Manufacturing Company with the ability to further develop manufacturing for a full line of ignition coils, temperature sending units, voltage regulators and other automotive products of which the automotive industry is fully familiar with.

By the beginning of the 21st century, the Atwater Kent®

Manufacturing Company has been successful in it's introduction of remanufacturing and wide development of automotive replacement parts, of which are still expanding on a daily basis.

In keeping with it's roots, the Atwater Kent® Manufacturing Company has maintained it's deep heritage by the re introduction of it's world famous Atwater Kent® Radios. The Atwater Kent® line of radios expose the inner world of true quality married with modern art. The Atwater Kent® radio's extremely distinctive construction and matchless sound quality give our listeners a truly remarkable experience.

Arthur Atwater Kent; founder of the Atwater Kent® Manufacturing Company started his career on Herman Street. in Worcester, Massachusetts in 1895 under the name of Kent Electrical Manufacturing Company

Though prosperous in Worcester, Mr. Kent was not content with his accomplishments in the booming manufacturing city, he therefore relocated his business to Arch Street in Philadelphia, Pennsylvania in 1904.

In purchasing his first single cylinder automobile, Mr. Kent soon encountered the troubles of many automobile owners of the period; Undependable ignition systems. Mr. Kent was so troubled by this he sat right down and invented the first automotive distributor; patent #12273. This basic design was used on all automobiles up to 1980. Arthur Atwater Kent received the John Scott Legacy Award for his

innovation and America was driving dependable automobiles.

Mr. Kent did not stop there, holding more than 100 various patents from 1906 to 1936 and building a 32 acre plant on Wissahickon Avenue Philadelphia, Pennsylvania, he soon became the largest manufacturer of radio sets in the world. By 1926, he was manufacturing over 2 million radios a year, outselling RCA.

The Atwater Kent® Manufacturing Company was founded on very simple, but stern, standards that we still adhere to today;

1. "Manufacture what you sell.
2. Never be satisfied as there is always room for improvement
3. There is NO substitution for quality, craftsmanship, and dependability."

- Arthur Atwater Kent

"The Atwater Kent Manufacturing Co. has never had any shares of its stock on the market. It owns outright its business and its manufacturing plant. It has been in business for more than twenty-seven increasingly profitable years, has always done business on its own capital and has never borrowed a dollar. All its resources and experience are concentrated upon just one thing -- the making and selling of fine radio instruments. Production in its thirty-two acre factory is scientifically controlled, so that Atwater Kent dealers always have enough radio on hand to meet the public demand, and are never

overstocked. Its inventory is never excessive. Single-minded devotion to its one job -- the production of the finest radio that can be built -- has put the Atwater Kent Manufacturing Company today in the strongest position it has ever held. Strongest in the excellence of its product -- Atwater Kent Screen-Grid Radio. Strongest in the confidence of the public. Strongest in stability, which is the keystone of permanence in any business."

- Arthur Atwater Kent, October 31st 1929. (letter to stock holders two days after the stock market crash.)

All of us at Atwater Kent® Manufacturing Company today pledge to you that same quality products produced yesteryear, will be produced today! When in the market for dependable automotive products or custom manufactured thermionic valve radios, You need not look any further than Atwater Kent®!
