ESTTA Tracking number: **ESTTA334701**
Filing date: **03/01/2010**

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

Proceeding	92051149
Party	Defendant Michael D. Leveille
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Date	03/01/2010
Attachments	ATWATER KENT (Answer to Cancellation).pdf (10 pages)(259866 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. and Atwater Kent Manufacturing Company

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

RESPONSE TO THE FIRST AMENDED PETITION FOR CANCELLATION

Respondent, Michael D. Leveillee, responds to Petitioner's allegations as follows:

PETITIONER'S ALLEGATION 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").

RESPONDENT'S RESPONSE: Admitted.

PETITIONER'S ALLEGATION 2: Petitioner is a Delaware company founded in 1919 and run by Arthur Atwater Kent ("Atwater Kent").

RESPONDENT'S RESPONSE: Respondent does not have sufficient information to confirm or deny this allegation and therefore leaves Respondent to its proofs, thereby denying the allegation.

PETITIONER'S ALLEGATION 3: Atwater Kent invented the closely timed ignition system, and operated the world's largest radio factory in Pennsylvania.

RESPONDENT'S RESPONSE: Admitted.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Admitted.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Respondent does not have sufficient information to admit or deny this allegation, and leaves Petitioner to its proofs.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Respondent does not have sufficient knowledge to admit or deny this allegation, and therefore leaves Petitioner to its proofs.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Admitted.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Respondent does not have sufficient information to admit or deny this allegation, and therefore leaves petitioner to its proofs.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Respondent does not have sufficient information to admit or deny this allegation and therefore leaves petitioner to its proofs.

PETITIONER'S ALLEGATION 10: Recently, Petitioner became aware that Respondent is conducting business under the trade name Atwater Kent Manufacturing Company.

RESPONDENT'S RESPONSE: Respondent does not have sufficient information to admit or deny this allegation and therefore leaves petitioner to its proofs.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Denied that Respondent makes any false claims to association with either Atwater Kent or Respondent. Answering further, Respondent states that the web site to which Petitioner refers, when taken as a whole, makes clear that Respondent makes replicas and custom replacement parts for collectors and antique car buffs, including replicas of, and parts for, items once manufactured by the company founded by Atwater Kent, which company

ceased all manufacture of any such items in 1935.

PETITIONER'S ALLEGATION 12: Respondent claims to manufacture and sell radio and automotive parts as did Petitioner and Atwater Kent.

RESPONDENT'S RESPONSE: Because respondent considers the term "as did" ambiguous, applicant is unable to admit or deny this allegation and therefore leaves petitioner to its proofs.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: The meaning of the terms "association" and "authenticity" in this context is ambiguous, and Respondent is unable to and does not have sufficient information to admit or deny this allegation.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: The meaning of the term "association" in this context is ambiguous, and respondent is unable to and does not have sufficient information to admit or deny this allegation.

PETITIONER'S ALLEGATION 15: Further, Respondent's actions is likely to damage the good name and reputation of Petitioner and its founder Atwater Kent.

RESPONDENT'S RESPONSE: Denied.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Admitted.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Admitted.

PETITIONER'S ALLEGATION 18: Respondent is neither the owner nor exclusive licensee of ATWATER KENT trademark or trade name.

RESPONDENT'S RESPONSE: Denied.

PETITIONER'S ALLEGATION 19: Respondent was not and is not authorized to register a trademark containing Atwater Kent's name.

RESPONDENT'S RESPONSE : Denied.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Denied.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Denied.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Denied.

PETITIONER'S ALLEGATION 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.

RESPONDENT'S RESPONSE: Denied.

PETITIONER'S ALLEGATION 24: Respondent's 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.

RESPONDENT'S RESPONSE: Denied.

PETITIONER'S ALLEGATION 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 of its goods as those of Petitioner on its web site, and in advertising and promotions indicating its association with the founder Atwater Kent and Petitioner itself.

RESPONDENT'S RESPONSE: Denied

PETITIONER'S ALLEGATION 26: 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.

RESPONDENT'S RESPONSE: Denied.

This Response is filed electronically.

Respectfully submitted,

MICHAEL D. LEVEILLEE d/b/a J.F. Sullivan Co. &
ATWATER KENT MANUFACTURING COMPANY,
Respondent

By his attorneys,

March 1, 2010

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CERTIFICATE OF MAILING

I hereby certify that the foregoing Response to the First Amended Petition for Cancellation is being deposited on the first day of March, 2010, via the U.S.P.T.O's electronic System for Trademark Trials and Appeals, and by first-class mail, postage prepaid, to:

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