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

Proceeding	92053066
Party	Defendant Yulong Computer Telecommunication; Scientific (Shenzhen) Co., Ltd
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Date	01/10/2012
Attachments	2nd Amended Answer.pdf (9 pages)(19997 bytes)

Registration Subject to the filing

Registration No	2563728	Registration date	04/23/2002
Registrant	Road Tools LLC 15 Frontier Street Rye, NH 03870 UNITED STATES		
Grounds for filing	The registered mark has become the generic name for the goods.		

Goods/Services Subject to the filing

Class 009. First Use: 1997/07/16 First Use In Commerce: 1997/07/16

All goods and services in the class are requested, namely: Computer stands specifically designed for holding a computer

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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<p>ROAD TOOLS INC.,</p> <p style="text-align: center;">Petitioner</p> <p style="text-align: center;">v.</p> <p>YULONG COMPUTER TELECOMMUNICATION SCIENTIFIC (SHENZHEN) CO., LTD.</p> <p style="text-align: center;">Registrant</p>	<p>Cancellation No.: 92053066</p> <p>Mark: COOLPAD (and Design) Reg. No. 3527661</p>
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**REGISTRANT'S SECOND AMENDED ANSWER AND COUNTERCLAIM FOR
CANCELLATION OF REGISTRATION NO. 2563728**

Yulong Computer Telecommunication Scientific (Shenzhen) Co. Ltd. ("Yulong") Answers and responds to the Petition for Cancellation filed by Petitioner Road Tools, Inc. ("Road Tools") against its pending Registration No. 3527661 as set forth below.

ANSWER

Registrant Yulong Computer Telecommunication Scientific (Shenzhen) Co. Ltd., generally and specifically denies each and every allegation contained in the Petition for Cancellation of Registration No. 3527661 filed by Petitioner Road Tools LLC.

With respect to the numbered Paragraphs in the Notice of Opposition, Applicant Answers as follows:

1. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1 of the Petition and therefore denies same. Registrant does however acknowledge that according to the USPTO's online electronic

Trademark Application and Registration Retrieval (TARR) system, the last “owner of record” of U.S. Trademark Registration No. 2563728 was listed as “Road Tools LLC” with an address of 15 Frontier Street, Rye, NM, (New Mexico) 038790, United States, whose legal entity status was listed as Limited Liability Company organized in “Massachusetts.” Registrant further acknowledges that U.S. Trademark Registration No. 2563728 was issued only in connection with the following goods: “computer stands specifically designed for holding a computer.”

2. Registrant admits only that according to TARR, the ‘728 registration appears to be a live registration subsisting on the Principal Register. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 2 of the Petition and therefore denies same. Further, to the extent that the records of the ;728 reflect incorrect statements, Registrant denies the validity thereof.

3. Registrant admits only that the according to the records of TARR, the USPTO “accepted and approved the combined Section 8 and 15 application.” Registrant is without information sufficient to form a belief as to the remaining allegations contained in paragraph 3 of the Petition and therefore denies same.

4. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 of the Petition and therefore denies same.

5. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5 of the Petition and therefore denies same.

6. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 6 of the Petition and therefore denies same.

7. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7 of the Petition and therefore denies same.

8. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8 of the Petition and therefore denies same.

9. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9 of the Petition and therefore denies same.

10. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 10 of the Petition and therefore denies same.

11. Registrant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 of the Petition and therefore denies same.

12. Registrant admits the allegations contained in paragraph 12 of the Petition.

13. Registrant admits the allegations contained on page 3, in paragraph 13 of the Petition with respect to its application which matured into the '661 Registration. Registrant is without information sufficient to form a belief as to the remaining allegations contained in paragraph 13 of the Petition and therefore denies same.

14. Registrant admits only that the Examining Trademark Attorney assigned to review the '536 application initially issued a provisional partial refusal Office Action which applied only to specified goods in the U.S. application.

15. Registrant admits only that on July 9, 2008, Eastern Standard Time, Deying Guo, General Manager for Registrant, filed a response with the USPTO amending the '536 application.

16. Registrant admits the allegations contained in paragraph 16 of the Petition.

17. Registrant denies the allegations contained in paragraph 17 of the Petition inasmuch as it has exhibited, shown and demonstrated its goods at trade shows and attended sales meetings in the United States since 2007, and has sought a distributor in connection with its goods in the USA.

18. Registrant admits the allegations contained in paragraph 18 of the Petition.

19. Registrant admits the allegations contained in paragraph 19 of the Petition.

20. Registrant denies the allegations contained in paragraph 20 of the Petition.

21. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 21 of the Petition and therefore denies same.

22. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 22 of the Petition and therefore denies same.

23. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 23 of the Petition and therefore denies same.

24. Registrant is without information sufficient to form a belief as to the allegations contained paragraph 24 of the Petition and therefore denies same.

25. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 25 of the Petition and therefore denies same.

26. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 26 of the Petition and therefore denies same.

27. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 27 of the Petition and therefore denies same. Registrant denies that the attachments to the Petition have any evidentiary value or legal significance.

28. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 28 of the Petition and therefore denies same. Registrant denies that the attachments to the Petition have any evidentiary value, legal significance or precedential effect.

29. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 29 of the Petition and therefore denies same. Registrant denies that the attachments to the Petition have any evidentiary value or legal significance.

30. Registrant is without information sufficient to form a belief as to the allegations contained in paragraph 30 of the Petition and therefore denies same. Registrant denies that the attachments to the Petition have any evidentiary value or legal significance.

31. Registrant incorporates by reference all prior allegations as are set forth above.

32. Registrant denies the allegations contained in paragraph 32 of the Petition.

33. Registrant denies the allegations contained in paragraph 33 of the Petition.

34. Registrant denies the allegations contained in paragraph 34 of the Petition.

35. Registrant denies the allegations contained in paragraph 35 of the Petition.

36. Registrant denies the allegations contained in paragraph 36 of the Petition.

COUNTERCLAIM FOR CANCELLATION OF REGISTRATION NO. 2563728

Yulong Computer Telecommunication Scientific (Shenzhen) Co. Ltd. (“Yulong”) believes that it is being, and will continue to be, damaged by the registration of the term COOLPAD for the goods identified in Registration No. 2563728, owned by Road Tools Inc. (“Road Tools”) and hereby petitions to cancel same.

As grounds for its cancellation, Yulong alleges that, upon actual knowledge with respect to its own acts, and upon information and belief with respect to other matters:

37. Yulong Computer Telecommunication Scientific (Shenzhen) Co. Ltd. (“Registrant” or “Yulong”) is a corporation organized and existing under the laws of the People’s Republic of China, with an address of 8th Floor, B Building, Hi-Tech Plaza, Tian’an Cyber Park; Futian District, Shenzhen.

38. Yulong is a leading provider of smartphones, telephonic devices, and related goods in China and around the world.

39. Yulong owns Registration No. 3527661 for the mark COOLPAD (and Design) for “photography cameras; computer software use in database management; electronic pocket transistors; radiotelephony set comprise [sic] of transmitters and receivers; video telephones; acoustics, namely, apparatus for wireless transmission of acoustic information” in International Class 9 (“Yulong’s Registration”).

40. Road Tools is the owner of U.S. Registration No. 2563728 for the mark COOLPAD for “computer stands specifically designed for holding a computer” in International Class 9 (“Road Tools Registration”).

41. On September 27, 2010, Road Tools filed a Petition for Cancellation against Yulong’s Registration based on a likelihood of confusion under Section 2(d), 15 U.S.C. § 1052(d) between the marks in its Registration No. 2563728 and in Yulong’s Registration No. 3527661.

42. Road Tools’ product is a pad or stand designed to hold a computer in a manner that cools that device to prevent overheating.

43. Consumers in the relevant field use and understand “cool pad” and its grammatical equivalent “cooling pad” primarily to refer to the type of product listed in Registration No. 2563728.

44. The relevant purchasing public of computers understands “cool pad” or “cooling pad” as the common or class name of Road Tools’ products themselves.

45. The term “cool pad” is generic for Road Tools’ products, including the products listed in Registration No. 2563728, and is therefore incapable of functioning as a trademark.

46. If Road Tools is allowed to maintain its registration for the generic term “cool pad,” it will cause injury and damage to Yulong by improperly permitting Road Tools to continue without basis in its efforts to cancel Yulong’s Registration No. 3527661 for its telephony products.

47. Accordingly, Road Tools’ Registration No. 2563728 for the mark COOLPAD should be cancelled under 15 U.S.C. § 1064 on the grounds that the term “COOLPAD” is generic, and serves as a common descriptive name for the article itself.

Respectfully submitted,

Date: January 10, 2012

By: /B. Brett Heavner/

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Scientific (Shenzhen) Co. Ltd.

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing REGISTRANT'S SECOND AMENDED ANSWER AND COUNTERCLAIM FOR CANCELLATION OF REGISTRATION NO. 2563728 was served by first class mail, postage prepaid, on this 10th day of January 2012, upon counsel for Petitioner at the following address:

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Alexandria, Virginia 22314

/Susannah C. Kolstad/
Susannah C. Kolstad
Litigation Legal Assistant