

ESTTA Tracking number: **ESTTA376935**

Filing date: **11/04/2010**

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
Correspondence Address	YULONG COMPUTER TELECOMMUNICATION SCIENTIFIC (SHENZHEN) CO., LTD TIAN'AN CYBER PARK; FUTIAN DISTRICT, 8 FLOOR, B BLDG, HI-TECH PLAZA SHENZHEN, CHINA
Submission	Answer and Counterclaim
Filer's Name	Stephen L. Anderson
Filer's e-mail	attorneys@brandxperts.com
Signature	/StephenLAnderson/
Date	11/04/2010
Attachments	REGISTRANTS ANSWER AND COUNTERCLAIM FOR CANCELLATION F.pdf (12 pages)(350172 bytes)

Registration Subject to the filing

Registration No	2563728	Registration date	04/23/2002
Registrant	Road Tools LLC 15 FRONTIER STREET Rye, NM 03870 UNITED STATES		
Grounds for filing	The registered mark is functional.		
	The registered mark has been abandoned.		
	The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.		

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
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Trademark Registration No.: 3527661

Mark: **COOLPAD 酷派**

Registration Date: November 04, 2008

Road Tools LLC)	Cancellation No.: 92053066
)	
Petitioner,)	
)	
vs.)	REGISTRANT'S ANSWER TO
)	PETITION TO CANCEL
YULONG COMPUTER)	REGISTRATION AND
TELECOMMUNICATION; SCIENTIFIC)	COUNTERCLAIM FOR
(SHENZHEN) Co., LTD,)	CANCELLATION OF
Registrant)	REGISTRATION NUMBER 2563728
)	

Registrant, YULONG COMPUTER TELECOMMUNICATION; SCIENTIFIC (SHENZHEN) Co., LTD, a corporation organized and existing under the laws of the People's Republic of China, with a principal place of business at 8 Floor, B Bldg, Hi-Tech Plaza, Tian'an Cyber Park; Futian District, Shenzhen, (hereinafter "Registrant"), for its answer to the Petition To Cancel Registration of its trademark COOLPAD (stylized and design): **COOLPAD 酷派**, published for Opposition on August 19, 2008, under application Serial No. 79/033536, and duly registered by the United States Patent & Trademark Office ("USPTO") on November 04, 2008, hereby generally and specifically denies each and every allegation contained in the Petition To Cancel Registration filed by Road Tools LLC, (hereafter Road Tools LLC or "Petitioner") hereinafter not specifically admitted, modified, or qualified, and strict proof is demanded thereof.

Registrant further responds as follows:

Upon information and belief, Registrant specifically denies that that Road Tools, LLC is an entity organized under the laws of New Hampshire, with an address of 15 Frontier Street, Rye, New Hampshire, 03870. To the contrary, Registrant is informed and believes as follows:

(a) that there has never been any entity registered in the State of New Hampshire with the name of “Road Tools, LLC;”

(b) that the address of 15 Frontier Street, Rye, New Hampshire, 03870 is occupied by Elizabeth Conner, C.P.A.; and

(c) that the entity known as “Road Tools LLC” was once a Domestic Limited Liability Company organized under the laws of the Commonwealth of Massachusetts, which has no present legal entity or juridical status, citizenship, personage, or standing, because such entity is no longer in existence or cognizable in any legal form, since it was involuntarily dissolved by Court Order and by the Massachusetts Secretary of the Commonwealth, Corporations Division on April 30, 2009.

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, 03870, United States, whose legal entity status was listed as a Limited Liability Company Organized in “Massachusetts.” Registrant further acknowledges that U.S. Trademark Registration No. 2563728 “the ‘728 registration”) was issued in connection with “computer stands specifically designed for holding a computer”.

2. Registrant admits only that the 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.

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 in the United States since 2007, and has sought a distributor in connection with sales of 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 denies the allegations contained in paragraph 22 of the Petition.

23. To the extent that the Petition refers to "Apple," 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.

Registrant denies the prayer and further denies Petitioner's request that registration of the subject mark registered under U.S. Trademark Certificate of Registration No. 3,527,661 be cancelled.

Registrant further asserts the following affirmative defenses, in the alternative:

AFFIRMATIVE DEFENSES

1. The Petition To Cancel fails to state a claim upon which relief can be granted, and in particular, fails to state any legally sufficient grounds for sustaining the Cancellation as requested.

2. Petitioner's claims are barred because the Petitioner because the Petitioner is not a "person" as described in Article III of the United States Constitution, nor as described in 15 USC 1064, nor 37 C.F.R. § 2.111(b), and thusly lacks any standing to bring this action herein due to its lack of capacity because the Petitioner has been administratively dissolved. Accordingly, under applicable law, Petitioner lacks any standing to assert the Petition and may not conduct any business except that which is necessary to wind up and liquidate its business.

3. Petitioner has abandoned any and all alleged common law rights and any and all rights in Registration No. 2,563,728 without any intent to resume such use.

4. Opposer does not own any trademark rights in the marks asserted.

5. Petitioner's claims are barred by the doctrine of laches.

6. Petitioner's claims are barred by the doctrine of estoppel.

7. Petitioner's claims are barred by acquiescence.

8. Petitioner's alleged use of the mark is not in the ordinary course of trade and is not "use in commerce" sufficient to be cognizable use supporting rights of the Petitioner under the Lanham Act or otherwise.

9. Petitioner's claims are barred by the doctrine of unclean hands.

10. Petitioner's alleged trademark registration is void, invalid, and/or void ab initio.

11. Petitioner's claims are barred because the Petitioner has engaged in trademark misuse, and the Petitioner's claimed registration is being used by, or with the permission of, the

Petitioner so as to misrepresent the source of the goods or services on or in connection with which the mark is used.

12. There is no likelihood of confusion, mistake or deception because, *inter alia*, the Registrant's mark and the pleaded mark of the Petitioner are not confusingly similar. Registrant's mark in its entirety is sufficiently distinctively different from Petitioner's alleged marks to avoid confusion, deception or mistake as to the source or sponsorship or association of Registrant's goods. Registrant's use of its mark will not mistakenly be thought by the public to derive from the same source as Petitioner's alleged goods, nor will such use be thought by the public to be a use by Petitioner or with Petitioner's authorization or approval. Moreover, Registrant's mark, when used on Registrant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Registrant with Petitioner, or as to the origin, sponsorship or approval of Registrant's goods by Petitioner. The Petitioner's goods specified in its alleged Trademark Registration, namely "computer stands specifically designed for holding a computer" are highly dissimilar in nature as compared to Registrant's goods covered by the Subject '661 Registration.

13. There are a myriad of adoptions and uses of the terms COOL and PAD in the field of computer stands and computer accessories which themselves are highly diluted as a trademark formative. Both terms COOL and PAD have been previously adopted and are contemporaneously used widely within several industries, particularly including goods related to "computer stands specifically designed for holding a computer," as to other computer-related goods in International Class 009 of the Registrant and Petitioner as well as a variety of non-competing uses. As a result, any claims by the Petitioner to the alleged mark (in part or in full) are hence weak. As such, there cannot exist any likelihood of confusion between the Petitioner's alleged marks and the Registrant's mark.

14. Registrant further alleges that unlike most consumer goods, both the Registrant's goods and the Petitioner's alleged goods are typically purchased by sophisticated purchasers seeking high-tech electronic apparatuses with particular size, computing and communications specifications. Inasmuch as such conditions exist under which the prospective buyers to whom the respective parties' sales are made occur only after significant communications and evaluation, there is not even a remote possibility of confusion herein.

15. Until Petitioner had filed this action, the Subject Registration existed on the Principal Register without any issues, conflicts or correspondence between the parties and has and does continue to exist without any actual or likely confusion as between the Petitioner and Registrant y anyone.

In view of the foregoing, Registrant contends that: the Petitioner's claims are groundless and baseless in fact; that the Petitioner's claims in its Petition are false and inconsistent; that the Petitioner lacks any standing to bring the Petition (or defend the counterclaim) herein; that the Petitioner has not shown wherein it will be, or is likely to be, damaged by the continued registration of Registrant's existing trademark; that Registrant's trademark is manifestly distinct from any alleged mark of the Petitioner or any designation of the Petitioner and Registrant prays that the Petitioner's claims be dismissed as to the subject Registration.

COUNTERCLAIM FOR CANCELLATION OF REGISTRATION NUMBER 2563728

Registrant believes that it is being damaged by, and will be further damaged by the continued registration of the mark COOLPAD as shown in U.S. Trademark Registration Certificate No. 2,563,728, issued on April 23, 2002 ("the '728 Registration"), in connection with ""computer stands specifically designed for holding a computer," and hereby petitions to cancel such Registration under 15 U.S.C. §1064(3).

The grounds for cancellation of the '728 Registration are as follows:

1. Registrant/Counterclaimant is the owner of the trademark **COOLPAD 酷派**, including in the United States as evidenced by United States Trademark Registration Certificate No. 3,527,661 which published for Opposition on August 19, 2008, under application Serial No. 79/033536, and which was duly registered by the USPTO on November 04, 2008 in connection with “photography cameras; computer software use in database management; electronic pocket translators; radiotelephony set comprise of transmitters and receivers; video telephones; acoustics sets, namely, apparatus for wireless transmission of acoustic information” in International Class 009.

2. Petitioner/Counterclaim Defendant is identified as the current owner of “the ‘728 Registration for the mark COOLPAD in connection with “computer stands specifically designed for holding a computer,” in International Class 09 which it has asserted against the Registrant/Counterclaimant in this proceeding. Registrant/Counterclaimant seeks to avoid any future potential likelihood of confusion as between the mark shown in such registration and its own **COOLPAD 酷派** trademark and further wishes that the ‘728 registration is never asserted against it in the future.

3. Upon information and belief Registrant/Counterclaimant herein alleges that Road Tools, LLC has no present legal entity or juridical status, citizenship, personage, or standing in this proceeding.

4. Upon information and belief Registrant/Counterclaimant further alleges that Road Tools LLC was a Domestic Limited Liability Company organized under the laws of the Commonwealth of Massachusetts, which was involuntarily dissolved by Court Order and by the Massachusetts Secretary of the Commonwealth, Corporations Division on April 30, 2009.

5. Upon information and belief, there has never been any legal entity registered in the State of New Hampshire with the name of “Road Tools, LLC” and further, the address of 15 Frontier Street, Rye, New Hampshire, 03870 is occupied by Elizabeth Conner, C.P.A. and is not used by “Road Tools LLC” to conduct any business whatsoever

First Basis for Cancellation- Non-Use - Abandonment

6. Registrant/Counterclaimant incorporates paragraphs 1 through 5 of this Counterclaim above as if fully set forth herein.

7. Upon information and belief, since May 01, 2009 and continuing through the present, Petitioner/Counterclaimant has not used the COOLPAD mark shown in the ‘728 Registration, in commerce, in connection with any goods or services.

8. Upon information and belief, Petitioner/Counterclaimant is not currently offering, selling or providing any “computer stands specifically designed for holding a computer,” in International Class 09 in connection with the COOLPAD trademark.

9. Upon information and belief, the Petitioner/Counterclaimant has not applied for revivor of its business entity, although it was involuntarily dissolved more than eighteen months ago.

10. Upon information and belief, the Petitioner/Counterclaimant has not assigned nor licensed use of the ‘728 Registration to any third party.

11. Upon information and belief, the Petitioner/Counterclaimant has abandoned use of the mark shown in the ‘728 Registration and does not intend to resume bona fide use of the mark in the ordinary course of trade. The Petitioner/Counterclaimant has thusly abandoned the mark within the meaning of Section 45 of the Lanham Act.

Second Basis for Cancellation – Trademark Misuse

12. Registrant/Counterclaimant incorporates paragraphs 1 through 11 of this

Counterclaim above as if fully set forth herein.

13. Upon information and belief, the mark shown in the '728 Registration has not been used by the Petitioner/Counterclaim Defendant since at least as early as April 30, 2009 and is not presently in use by Petitioner/Counterclaim Defendant.

14. To the extent that the COOLPAD mark has been used, in connection with any "computer stands specifically designed for holding a computer," if any, since May 01, 2009 and continuing through the present, it has been used solely as to misrepresent the source of the goods in connection with which such mark has been used.

15. Further by asserting the '728 Registration in this proceeding, (and without first having contacted the Registrant) well over two years after the Registrant had obtained the '661 Registration and well over one year after the Petitioner/Counterclaim Defendant had been involuntarily dissolved by the Massachusetts Secretary of the Commonwealth, Petitioner/Counterclaim Defendant has engaged in trademark misuse herein.

16. If, as alleged by Petitioner/Counterclaim Defendant in its Petition to Cancel the '661 Registration, there is a likelihood of confusion between the Registrant/Counterclaimant's **COOLPAD 酷派** mark, and any use of the COOLPAD mark in connection with "computer stands specifically designed for holding a computer," then Registrant/Counterclaimant will be damaged and injured by reason of such Registration, inasmuch as endows the Petitioner/Counterclaim Defendant with at least the prima facie right to use the mark, and to further threaten and perhaps even pursue litigation against Registrant as based upon the color of authority thereon. Further, if the Petitioner/Counterclaim Defendant is permitted to continue to maintain its invalid registration, the continued registration casts a cloud upon Registrant/Counterclaimant's own rights to continue to use, develop, and expand the use of its own

COOLPAD 酷派 mark in the United States. The '728 Registration is therefore and would remain as a source of damage and injury to the Registrant/Counterclaimant.

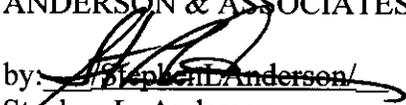
WHEREFORE, prays that the '728 Registration be cancelled pursuant to 15 U.S.C. § 1064(3), because: (1) the mark shown in the '728 Registration has not been used in commerce by the Petitioner/Counterclaim Defendant at any time since May 01, 2009; (2) to the extent that the mark has been used, if any, it has been used so as to misrepresent the source of the goods in connection with which the mark has been used; and (3) the mark shown in the '728 Registration has been abandoned by Road Tools, LLC without any bona fide intent to resume use in the ordinary course and trade.

The fee of \$300.00 required by Section 2.6(a)(16) is enclosed herewith.

Respectfully submitted,

Dated: November 04, 2010

ANDERSON & ASSOCIATES

by: 
Stephen L. Anderson
Attorney for Registrant/Counterclaimant
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Temecula, CA 92590
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Certificate of Service

I hereby certify that on the date set forth below, a true copy of the foregoing **REGISTRANT'S ANSWER TO PETITION TO CANCEL REGISTRATION AND COUNTERCLAIM FOR CANCELLATION OF REGISTRATION NUMBER 2563728** was mailed first-class mail, postage prepaid, to
JEFFREY H. GREGER
LOWE HAUPTMAN HAM & BERNER LLP
1700 DIAGONAL ROAD, SUITE 310
ALEXANDRIA, VA 22314

Dated: November 4, 2010


Stephen L. Anderson