

ESTTA Tracking number: **ESTTA389907**

Filing date: **01/24/2011**

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	VER Sales, Inc.		
Entity	Corporation	Citizenship	California
Address	2509 N. Naomi Street Burbank, CA 91504 UNITED STATES		

Attorney information	Jessie K. Reider, CA Bar No. 237,113 Buchalter Nemer, A Professional Corporation 1000 Wilshire Blvd., Suite 1500 Los Angeles, CA 90017 UNITED STATES jreider@buchalter.com, trademark@buchalter.com Phone:213-891-5031		
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Registration Subject to Cancellation

Registration No	3025887	Registration date	12/13/2005
Registrant	Full Throttle Films, Inc. 912 Ruberta Avenue Glendale, CA 91201 UNITED STATES		

Goods/Services Subject to Cancellation

Class 038. First Use: 1990/09/00 First Use In Commerce: 1990/09/00 All goods and services in the class are cancelled, namely: Rental of equipment, namely, broadcast equipment
Class 041. First Use: 1990/09/00 First Use In Commerce: 1990/09/00 All goods and services in the class are cancelled, namely: Rental of equipment, namely, audio, video, and camera equipment

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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.	Trademark Act section 14

Attachments	VER Cancellation.PDF (9 pages)(141665 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	/jkr/
Name	Jessie K. Reider, CA Bar No. 237,113
Date	01/24/2011

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

In the Matter of Registration No. 3025887

For the Mark VER

Filed on September 23, 2004

Issued on December 13, 2005

VER Sales, Inc.,)	
)	
Petitioner)	Cancellation No. _____
)	
v.)	Registration No. 3,025,887
)	
Full Throttle Films, Inc.,)	Mark: VER (words only)
)	
Registrant.)	

VER Sales, Inc., a corporation organized and existing under the laws of the State of California with a principal place of business of 2509 N. Naomi Street, Burbank, California, 91504 (hereinafter "Petitioner") believes that it will be damaged by the continued registration of the above identified trademark registration in the name of Full Throttle Films, Inc., a corporation organized under the laws of the State of California with a registered place of business of 912 Ruberta Avenue, Glendale, California 91201 (hereinafter "Registrant") and hereby petitions to cancel the same.

As grounds for this petition, it is alleged that:

1. Petitioner, and through its predecessors in interest and related companies, has used the VER mark, and stylized versions thereof, in connection with wholesale, rental, retail and online retail store services featuring safety, construction, theatrical, mountain climbing, hardware, entertainment and specialty equipment and supplies; custom manufacture of safety,

construction, theatrical, hardware, entertainment and specialty equipment and supplies (hereinafter "Petitioner's Mark"). Petitioner has used the VER mark in connection with these services since as early as 1972.

2. Petitioner's use of the VER mark has been continuous since its first use of the VER mark in 1972.

3. Petitioner owns extensive common law rights in and to Petitioner's Mark.

4. On November 29, 2010, Petitioner filed an application to register Petitioner's mark, Serial No. 85/186,727. On November 29, 2010, Petitioner also filed an application to register the VER and DESIGN mark, Serial No. 85/188,635 (together, collectively, "Petitioner's Applications").

5. Petitioner has promoted, marketed and provided services throughout the United States and has developed valuable goodwill in and to Petitioner's Mark.

6. Petitioner has expended considerable effort and expense in promoting Petitioner's Mark, and, as a result, the purchasing public has come to recognize Petitioner's Mark as indicative of the services provided by Petitioner.

7. Petitioner has developed and maintained a loyal customer base, all of whom recognize Petitioner as the source of the services marketed under Petitioner's Mark.

8. Due to Petitioner's long and successful use of Petitioner's Mark, the mark has achieved a position of recognition and fame.

9. Notwithstanding Petitioner's prior rights in and to the VER mark, Registrant has obtained United States Trademark Registration No. 3025887 for the VER mark for *rental of equipment, namely, broadcast equipment* in Class 038 and *rental of equipment, namely, audio, video and camera equipment* in Class 041. The registration issued on December 13, 2005 and claims a first use date of September 1990 for both classes of services. A copy of that Certificate of Registration is attached hereto as Exhibit A.

10. Petitioner's use of Petitioner's Mark is prior to Registrant's use of Registrant's VER mark. As such, Petitioner is the senior user and entitled to registration of Petitioner's Mark.

11. In the past several years, there have been instances of actual confusion between the services offered by Registrant and the services offered by Petitioner, both under the VER mark.

12. The instances of actual confusion between Petitioner's Mark and Registrant's VER mark have recently increased.

13. Registrant's registration for the VER mark is being used by Registrant so as to misrepresent the source of the services on or in connection with which the VER mark is used.

14. Petitioner further seeks cancellation of Registration No. 3025887 based on fraud. Registration No. 3025887 was obtained fraudulently in that the formal application papers filed by Registrant, under notice of Section 1001 of Title 18 of the United States Code, stated that the Registrant:

...to the best of his/her knowledge and belief no other person, firm corporation or association has the right to use the mark in commerce, either in identical form thereof or in such near resemblance thereto as to be likely, when used in connection with the goods/services of such other person, firm, corporation, or association to cause confusion, or to cause mistake, or to deceive...

15. Said statement was made by an officer of Registrant, Registrant's President, Scott Dundee, on September 13th, 2004, with the intent to induce agents of the United States Patent and Trademark Office to grant said registration, and, reasonably relying upon the truth of said false statement, the United States Patent and Trademark Office did, in fact, grant such registration.

16. To the best of Petitioner's knowledge, at the time the application for Registrant's VER mark was filed, Registrant had knowledge of Petitioner's mark and of Petitioner's prior use of the VER mark in commerce. To the best of Petitioner's knowledge, at the time the application for Registrant's VER mark was filed, Registrant knew that Petitioner had the superior right to use the VER mark.

17. The representations made by Registrant on September 14th, 2004 were false.

18. Registrant knew that the representations were false.

19. Registrant knowingly made a material misrepresentation to the Trademark Office to procure a registration for Registrant's VER mark.

20. Registrant intended to deceive the Trademark Office.

21. The Trademark Office relied on the representations when issuing a registration for Registrant's VER mark.

22. The Trademark Office would not have registered Registrant's VER mark but for the misrepresentation.

23. Registrant's actions in the filing of Registrant's application to register the VER constitute fraud *ab initio*, thereby invalidating Registrant's registration for the VER mark. Accordingly, Registrant's registration for the VER mark should be struck from the register in its entirety.

24. If Registrant is permitted to retain the registration sought to be cancelled herein, Petitioner will be damaged by such registration, as the ongoing existence of the registration would support and assist Registrant in use of the VER mark that is the subject of the registration, and thereby create further confusion, in addition to the actual confusion already present in the marketplace.

25. If Registrant is permitted to retain the registration sought to be cancelled herein, Petitioner may also be damaged by virtue of its inability to register its trademarks. Petitioner has much to be gained in being granted a federal trademark registration for use of Petitioner's Mark. The ongoing inability of Petitioner to do so will cause direct and irreparable damage to Petitioner, effectively limiting Petitioner's ability to protect and enforce its valuable trademark.

26. If Registrant is permitted to retain the registration sought to be cancelled herein, Petitioner will be damaged by such Registration, as the ongoing existence of the registration would support and assist registrant in use of the VER mark that is the subject of the registration, and thereby dilute Petitioner's rights in Petitioner's Mark.

27. Registrant's use and registration of the VER mark interferes with Petitioner's Mark and will damage Petitioner, its business and its goodwill.

WHEREFORE, Petitioner deems that it is now and will continue to be damaged by Registration No. 3,025,887 and seeks cancellation of the same.

Please direct all correspondence relating to this matter to the undersigned attorney for Petitioner. The Patent and Trademark Office is authorized to charge the filing fee to Deposit Account No. 500977.

Respectfully Submitted,

VER Sales, Inc.



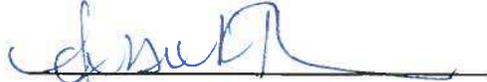
Jessie K. Reider
Attorney for Petitioner
Buchalter Nemer
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Los Angeles, California 90017
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Email: trademark@buchalter.com

Dated: January 24, 2011

CERTIFICATE OF SERVICE

Petitioner VER Sales, Inc., hereby certifies that a copy of this PETITION FOR CANCELLATION has been served upon the attorney of record for Registrant Full Throttle Films, Inc, on this 24th day of January, 2011, by First Class U.S. Mail, at the following address:

David G. Bayles
Arent Fox LLP
555 West Fifth Street, 48th Floor
Los Angeles CA 90013-1065



Jessie K. Reider
Attorney for Petitioner

EXHIBIT A

Int. Cls.: 38 and 41

Prior U.S. Cls.: 100, 101, 104 and 107

United States Patent and Trademark Office

Reg. No. 3,025,887

Registered Dec. 13, 2005

**SERVICE MARK
PRINCIPAL REGISTER**

VER

FULL THROTTLE FILMS, INC. (CALIFORNIA CORPORATION)
912 RUBERTA AVENUE
GLENDALE, CA 91201

FOR: RENTAL OF EQUIPMENT, NAMELY, BROADCAST EQUIPMENT, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 9-0-1990; IN COMMERCE 9-0-1990.

FOR: RENTAL OF EQUIPMENT, NAMELY, AUDIO, VIDEO, AND CAMERA EQUIPMENT, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 9-0-1990; IN COMMERCE 9-0-1990.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 76-613,615, FILED 9-23-2004.

JENNIFER KRISP, EXAMINING ATTORNEY