

TTAB



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January 19, 2011

**VIA FACSIMILE NO. (571) 273-0059 &
OVERNIGHT MAIL**

Trademark Assistance Center
c/o Trademark Trial and Appeal Board
Madison East, Concourse Level Room C 55
Alexandria, VA 22314

RE: K2 Professional Services Inc. et al v. Fionnoel AG
Registration Nos.: 3,531,241 and 3,524,403
ESTTA Tracking Number: ESTTA387087 **Filing Date:** 01/06/2011
Our Matter No. 65308.409513

79/046, 728

Dear Sir or Madam:

Attached please find a copy of the *ESTTA. Petition for Cancellation. Confirmation receipt* and *Petition for Cancellation* as filed and served on January 6, 2011 in the above-referenced proceeding. As of today's date, this transaction is not reflected in your TTABVUE. Please confirm your receipt of this information and a date upon which we can expect it to be available online.

Your immediate attention to this matter is greatly appreciated.

Sincerely,

Robyne N. Gordon
Paralegal

:rng
Attachments



01-24-2011

US2008 2237119.1

U.S. Patent & TMO/TM Mail Rcpt Dt. #21

Gordon, Robyne

From: estta-server@uspto.gov
Sent: Thursday, January 06, 2011 7:28 PM
To: Henn, Charlie; Brewster, Bill; Gordon, Robyne; tadmin; Sullivan, Katie
Subject: ESTTA. Petition for Cancellation. confirmation receipt ID: ESTTA387087

Petition for Cancellation.

Tracking No: ESTTA387087

ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

We have received your Petition for Cancellation. submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

Please note:

Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.

If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at estta@uspto.gov.

The status of any Board proceeding may be checked using TTABVUE which is available at <http://ttabvue.uspto.gov> Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.

The Board will consider and take appropriate action on your filing in due course.

Printable version of your request is attached to this e-mail

ESTTA server at <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA387087
Filing date: 01/06/2011

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 parties request to cancel indicated registration.

Petitioner Information

Name: K2 Professional Services Inc.
Entity: Corporation
Citizenship: Georgia
Address: 396 Sutherland Place
Atlanta, GA 30307
UNITED STATES
Name: K2 Professionals, Inc.

Entity: Corporation
Citizenship: Georgia
Address: 396 Sutherland Place
Atlanta, GA 30307
UNITED STATES

Attorney information:

R. Charles Henn Jr.
KILPATRICK TOWNSEND & STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309
UNITED STATES
chenn@kilpatricktownsend.com,bbrewster@kilpatricktownsend.com,rgordon@kilpatricktownsend.com,tmadmin@kilpatricktownsend.com,ksullivan@kilstock.com Phone:404-815-6500

Registrations Subject to Cancellation

Registration No: 3531241
Registration Date: 11/11/2008
Registrant:
Fionnoel AG
Grabenstrasse 25 CH-6340 Baar

SWITZERLAND

Goods/Services Subject for Cancellation

Class 035.

All goods and services in the class are cancelled, namely: Employment agencies, recruitment of personnel, consultancy in human resources management Class 042.
All goods and services in the class are cancelled, namely: Consultation and advisory services for computers, consultation in computer software, design of computer software

Grounds for Cancellation:

Fraud
808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Torres v. Cantine Torresella S.r.l.

Trademark Act section 2(d)based on common-law trademark

Registration No: 3524403
Registration Date: 10/28/2008
Registrant:
Fionnoel AG
Grabenstrasse 25 CH-6340 Baar

SWITZERLAND

Goods/Services Subject for Cancellation

Class 035.

All goods and services in the class are cancelled, namely: Employment agencies, recruitment of personnel, consultancy in human resources management Class 042.
All goods and services in the class are cancelled, namely: Consultation and advisory services for computers, consultation in computer software, design of computer software

Grounds for Cancellation:

Fraud
808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Torres v. Cantine Torresella S.r.l.

Trademark Act section 2(d)based on common-law trademark

Attachments:

Petition for Cancellation.pdf (6 pages) Exhibit A - Complaint with Exhibits.pdf (18 pages)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address of record by First Class Mail on this date.

R. Charles Henn Jr.
/R. Charles Henn Jr./
01/06/2011

Confidentiality Notice:

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return e-mail or at 404 815 6500, and destroy the original transmission and its attachments without reading or saving in any manner.

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

K2 PROFESSIONAL SERVICES INC.,
and K2 PROFESSIONALS, INC.,

Petitioners,

vs.

FIONNOEL AG,

Registrant.

Cancellation No. _____

Registration Nos.: 3,531,241 and
3,524,403

PETITION FOR CANCELLATION

Petitioners, K2 Professional Services Inc. (“K2 Professional Services”), and K2 Professionals, Inc. (“K2 Professionals”), both Georgia corporations located and doing business in Atlanta, GA, 30307 (hereinafter “Petitioners”), are and will be damaged by the continued registration of the K2 PARTNERING SOLUTIONS mark, U.S. Trademark Registration No. 3,531,241, and the K 2 PARTNERING SOLUTIONS & Design mark, U.S. Trademark Registration No. 3,524,403, and therefore petition to cancel same.

As grounds for this Petition, Petitioners allege that:

1. Since 2001, prior to the filing date of the applications for Registrant’s registrations, K2 Professionals has provided consultant services to help clients implement and improve their supply chain solution software, particularly in connection with SAP modules, under the mark K2 PROFESSIONAL SERVICES. K2 Professional Services has been in the same business since 2003. Petitioners have enjoyed success in the SAP consulting business.

2. Petitioners have used the mark K2 PROFESSIONAL SERVICES continuously since 2001 in connection with their consulting services.

3. The public and the trade are familiar with Petitioners' K2 PROFESSIONAL SERVICES mark and identify it with Petitioners. By reason of this identification, services associated with the mark are understood by the public and trade to be marketed and provided, or authorized by, Petitioners.

4. Upon information and belief, the current owner of Registrant's K2 PARTNERING SOLUTIONS mark, U.S. Trademark Registration No. 3,531,241, and the K 2 PARTNERING SOLUTIONS & Design mark, U.S. Trademark Registration No. 3,524,403, is Fionnoel AG, an Swiss corporation with a business location of Grabenstrasse 25, CH-6340 Baar, Switzerland (hereinafter "Registrant").

5. Upon information and belief, the applications for both Reg. No. 3,531,241 and Reg. No. 3,524,403 were filed based on Lanham Act § 66(a), 15 U.S.C. § 1141f(a), on November 14, 2007, claiming a priority date of July 11, 2007. Both registrations issued within the last five years.

6. Registrant's K2 PARTNERING SOLUTIONS mark is registered in Class 35 for employment agencies, recruitment of personnel, consultancy in human resources management, and in Class 42 for consultation and advisory services for computers, consultation in computer software, design of computer software.

7. Registrant's K 2 PARTNERING SOLUTIONS & Design mark is registered in Class 35 for employment agencies, recruitment of personnel, consultancy in human resources management, and in Class 42 for consultation and advisory services for computers, consultation in computer software, design of computer software.

8. Petitioners own superior trademark rights in the K2 and K2 PROFESSIONAL SERVICES marks, based on priority of use in all or part of the United States, over any rights owned by Registrant.

9. On Oct. 20, 2010, Registrant sued Petitioners for trademark infringement and related causes of action in the District of Massachusetts, Civil Action No. 1:10-cv-11787-NMG. A copy of Registrant's Complaint in that action is attached as **Exhibit A**.

10. Registrant alleges and admits in its Complaint (Ex. A, ¶ 16) that the Parties' respective marks both feature the identical element K2 as a prominent portion of the marks.

11. Registrant alleges and admits in its Complaint (Ex. A, ¶ 16) that Registrant's and Petitioners' marks are used in connection with identical services.

12. Registrant alleges and admits in its Complaint (Ex. A, ¶ 17) that there is a likelihood of confusion between Registrant's and Petitioners' marks.

13. Registration Nos. 3,531,241 and 3,524,403 are less than five years old.

14. To the extent Registrant's allegation and admission of likelihood of confusion is correct, Reg. Nos. 3,531,241 and 3,524,403 should be canceled pursuant to Lanham Act §§ 2 and 14, 15 U.S.C. §§ 1052(d) and 1064(1).

15. On information and belief, at the time Registrant filed its applications and represented to the PTO that, under 15 U.S.C. § 1141(5), "no other person, firm, corporation, or association, to the best of [applicant's] knowledge and belief, has the right to use such mark in commerce either in the identical form of the mark or in such near resemblance to the mark as to be likely, when used on or in connection with the goods of such other person, firm, corporation, or association, to cause confusion, mistake, or deception," Registrant was aware of Petitioner's use of the K2 PROFESSIONAL SERVICES mark and priority of rights therein.

16. On information and belief, the representations Registrant made to the PTO on November 14, 2007 were false.

17. On information and belief, Registrant knew that the representations were false and made those representations with the intent to deceive the PTO.

18. On information and belief, Registrant knowingly made material misrepresentations to the PTO to procure Reg. Nos. 3,531,241 and 3,524,403.

19. The PTO relied on Registrant's false representations in issuing Reg. Nos. 3,531,241 and 3,524,403.

20. The PTO would not have issued Reg. Nos. 3,531,241 and 3,524,403 but for Registrant's false representations.

21. Registrant's actions in the procurement of Reg. Nos. 3,531,241 and 3,524,403 constitute fraud, thereby invalidating Reg. Nos. 3,531,241 and 3,524,403. Accordingly, Reg. Nos. 3,531,241 and 3,524,403 should be canceled in their entirety pursuant to Lanham Act § 14, 15 U.S.C. § 1064(3).

WHEREFORE, Petitioners request the Board to sustain this proceeding in Petitioners' favor and to cancel Reg. Nos. 3,531,241 and 3,524,403. **The Commissioner is authorized to debit Kilpatrick Townsend & Stockton LLP's deposit account no. 11-0860 if there is a deficiency in the required fee.**

January 6, 2011.

/R. Charles Henn Jr./

William H. Brewster

bbrewster@kilpatricktownsend.com

R. Charles Henn Jr.

chenn@kilpatricktownsend.com

Katharine M. Sullivan

ksullivan@kilpatricktownsend.com

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1100 Peachtree Street, Suite 2800

Atlanta, Georgia 30309-4530

Tel: (404) 815-6500

Fax: (404) 815-6555

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify that a copy of the attached PETITION FOR CANCELLATION was served on Registrant and Registrant's correspondent of record on January 6, 2011 via first class mail addressed to:

Fionnoel AG
Grabenstrasse 25 CH-6340 Baar
Switzerland

Lawrence E. Abelman
Abelman Frayne & Schwab
666 Third Avenue
10th Floor
New York, Ny 10017

/R. Charles Henn Jr./
Attorney for Petitioners

CERTIFICATE OF TRANSMITTAL

I certify that a copy of the attached PETITION FOR CANCELLATION is being filed electronically with the TTAB via ESTTA on January 6, 2011.

/R. Charles Henn Jr./
Attorney for Petitioners

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FIONNOEL AG, and K2
PARTNERING SOLUTIONS, INC.

Plaintiffs,

v.

K2 PROFESSIONAL SERVICES INC.,
and K2 PROFESSIONALS, INC.,

Defendant.

CIVIL ACTION NO.

COMPLAINT AND JURY DEMAND

Fionnoel AG (“Fionnoel”), and K2 Partnering Solutions, Inc. (“K2 Partnering”) (collectively, “Plaintiffs”), bring this civil action against K2 Professional Services Inc. (“K2 Professional Services”), and K2 Professionals, Inc. (“K2 Professionals”) (collectively, “Defendants”).

THE PARTIES

1. Plaintiff Fionnoel is a Swiss corporation with a place of business at Grabenstrasse 25, CH-6340 Baar, Switzerland.
2. Plaintiff K2 Partnering is a Delaware corporation with a place of business at 112 Water Street, Suite 502, Boston, MA 02109.
3. On information and belief, Defendant K2 Professional Services is a Georgia corporation with a place of business at 396 Sutherland Place, Atlanta, GA 30307.
4. On information and belief, Defendant K2 Professionals is a Georgia corporation with a place of business at 396 Sutherland Place, Atlanta, GA 30307.

JURISDICTION

5. This is an action for trademark infringement and unfair competition arising under the laws of the United States, namely the Lanham Act, 15 U.S.C. § 1051, *et seq.* Therefore, this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338. In addition, Fionnoel is a Swiss corporation, and K2 Partnering is a Delaware corporation, while both Defendants are Georgia corporations, and Plaintiffs seek damages associated with the past sale of services and injunctive relief associated with on-going sales of services believed to be greater than \$75,000. As a result, jurisdiction is also proper under 28 U.S.C. § 1332. Jurisdiction over the state law claims is proper under 28 U.S.C. § 1367.

6. Venue is appropriate under 28 U.S.C. § 1391(b).

7. On information and belief, Defendants offer services in Massachusetts under and in connection with marks that Plaintiffs assert infringe their rights. These infringements, *inter alia*, arise from services provided by Defendants in Massachusetts in connection with the infringing marks, including services provided to The Gillette Company, a Massachusetts resident. In addition, Defendants maintain a website, accessible in Massachusetts, advertising Defendants' services in relation to the infringing marks. This Court therefore has personal jurisdiction over Defendants.

BACKGROUND

8. Fionnoel is a well-respected licensor of rights relating to the provision of services concerning employment agencies, recruitment of personnel, consultancy in human resource management, and consultation related to computers and computer software. Fionnoel's business is to license others to perform these and other services under trademarks and service marks that it owns. K2 Partnering is a subsidiary company, and one of Fionnoel's licensees. K2 Partnering

provides services related to employment agencies, human resources consulting, and computer consulting in association with the K2 family of marks. In particular, a large part of K2 Partnering's business consists of providing Systems, Applications and Products in Data Processing ("SAP") consulting in association with the K2 family of marks.

9. At least since the late 1990s, Fionnoel and/or its licensees have used marks incorporating the word K2 in association with various employment agency, human resources, and consulting services, including SAP consulting. Such services are sold under the K2 family of marks, which includes K2, K2 PARTNERING SOLUTIONS, and K2 IT CONSULTANTS. Fionnoel's licensees have offered and performed such services under the K2 family of marks in the United States since at least 2000. Under license from Fionnoel, K2 Partnering has offered such services under the K2 family of marks in the United States since late 2003.

10. Through Plaintiffs' efforts and diligence, its K2 family of marks has become well known and services, including SAP consulting services, are currently sold throughout the United States under those marks. Millions of dollars of services have been sold under the K2 family of marks exclusively by Fionnoel and/or its licensees over the past decade, to many hundreds of customers.

11. By virtue of the longstanding popularity of the K2 family of marks and its expanding continuous use throughout the United States and elsewhere for a wide range of services, Plaintiffs' rights in the marks, both statutory and at common law *inter alia* for SAP consulting have become exceptionally valuable property rights.

12. Fionnoel also owns two United States trademark registrations for the K2 family of marks: Registration No. 3,531,241 for K2 PARTNERING SOLUTIONS in classes 35 and 42 for employment agencies, recruitment of personnel, consultancy in human resource management,

consultation and advisory services for computers, consultation in computer software, and design of computer software; and Registration No. 3,524,403 for K2 PARTNERING SOLUTIONS and logo in the same classes and for the same services. (Exhibits A-B).

13. Through extensive marketing, advertising, and sales Fionnoel's K2 family of marks has become well known, and the services sold in association with these marks have acquired significant good will and a reputation for quality.

14. Since long prior to the earliest relevant date upon which Defendants have used their infringing marks, Fionnoel has authorized and licensed others, including K2 Partnering, to manage the provision, promotion, marketing, advertising, and sale of SAP consulting and other services under the K2 family of marks.

15. On information and belief, K2 Professionals was formed in 2001, and K2 Professional Services was formed in 2003. At some point after Plaintiffs' first uses of the K2 family of marks in commerce, Defendants began offering SAP consulting services.

16. On information and belief, long after Fionnoel and its licensees established rights and substantial reputation and fame in the K2 family of marks, Defendants began offering their SAP services under the mark K2 PROFESSIONAL SERVICES. Defendants' use of this mark contains a leading, identifying portion (K2) which is identical to Plaintiffs' marks. In addition, Defendants often also use the K2 portion in a different color than the rest of the mark, thus highlighting that portion. Further, the rest of Defendants' use, PROFESSIONAL SERVICES, is the same number of words as the words after the K2 portion of Plaintiffs' mark K2 PARTNERING SOLUTIONS; the two words in both uses begin with the same letters ("p" and "s"); the words have an almost identical number of syllables; and they describe similar concepts. Moreover, Defendants use their mark in association with SAP consulting services, an identical

service to one for which Plaintiffs use their K2 marks. An example of Defendants' use is attached as Exhibit C, and shown below:



17. On information and belief, Defendants' use of K2 PROFESSIONAL SERVICES has caused and is likely to continue to cause confusion among relevant purchasing consumers for the parties' services, especially in the SAP consulting field. Relevant consumers are likely to assume that Defendants' services are provided or sponsored by Plaintiffs, or that the businesses and marks are commonly controlled.

18. On information and belief, Defendants' adoption of K2 PROFESSIONAL SERVICES as a mark for SAP consulting services commenced with the full knowledge of the prior use and substantial fame of the K2 family of marks owned by Fionnoel, and with the intent to trade on the good will previously established by Fionnoel and its licensees.

19. On information and belief, Defendants continue to sell and advertise for sale SAP consulting services under the K2 family of marks, thereby attempting to capitalize on the good will in the K2 family of marks, owned by Fionnoel long prior to Defendants' adoption of those marks.

20. Plaintiffs' common law and registered rights in the K2 family of marks for SAP consulting services long pre-date Defendants' uses of the K2 family of marks for SAP consulting services.

21. Defendants' use of the K2 family of marks is likely, when used in association with its services, to cause confusion or mistake or to deceive consumers, who are likely to think that such services originate with or are associated with Plaintiffs.

22. Defendants could not validly establish rights in the K2 family of marks for SAP consulting services, since any use of those marks for such services by Defendants was an infringement of Plaintiffs' rights in the K2 family of marks.

23. Plaintiffs placed Defendants on actual notice of the similarity and likelihood of confusion between their uses of their newly adopted marks and Plaintiffs' K2 family of marks.

24. Despite such notification, Defendants disregarded Plaintiffs' rights and continue to sell infringing services.

COUNT I
(Trademark Infringement Under 15 U.S.C. § 1114 and Common Law)

25. The allegations of Paragraphs 1-24 above are incorporated by reference.

26. Fionnoel owns United States Trademark Registrations numbered 3,531,241 and 3,524,403, and has common law rights in the K2 family of marks. K2 Partnering is a licensed user of those marks.

27. Defendants use colorable imitations of Fionnoel's K2 family of marks in commerce as their service marks and in association with its sale and advertisement of SAP consulting services similar to or identical to the types of services sold by K2 Partnering (a licensee of Fionnoel) under Fionnoel's K2 family of marks.

28. Defendants' use of the imitations is without permission of Fionnoel and is likely to cause confusion or mistake or to deceive. Defendants are therefore liable to Fionnoel for trademark infringement under 15 U.S.C. § 1114 and at common law.

29. Upon information and belief, such use by Defendants knowingly and willfully trades on the good will established by Fionnoel and its licensees in its K2 family of marks.

30. Fionnoel has been damaged by such conduct in an amount to be determined at trial.

31. Unless stopped by an injunction, Defendants' behavior will continue and will cause Fionnoel to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Fionnoel is entitled to injunctive relief. It is also entitled to damages for the infringement.

COUNT II
(False Designation of Origin Under 15 U.S.C. § 1125(a))

32. The allegations of Paragraphs 1-31 above are incorporated by reference.

33. Plaintiffs' K2 family of marks is recognized for quality in the SAP consulting services industry.

34. Defendants provide their SAP consulting services to a similar class of retailers and consumers as K2 Partnering and Fionnoel and its licensees do.

35. On information and belief, Defendants' use of a service mark confusingly similar to Plaintiffs' K2 family of marks has the effect of associating Defendants or their services with Plaintiffs' K2 family of marks in the minds of the purchasing public, thereby trading off the good will acquired by Plaintiffs.

36. Defendants' actions are likely to cause confusion or mistake, or to deceive as to the affiliation, connection or association of Defendants with Plaintiffs as to the origin, sponsorship or approval of Defendants' services by Plaintiffs, entitling Plaintiffs to relief under 15 U.S.C. § 1125(a).

37. Plaintiffs have been damaged by such conduct in an amount to be determined at trial.

38. Unless stopped by an injunction, Defendants' behavior will continue and will cause Plaintiffs to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Plaintiffs are entitled to injunctive relief. They are also entitled to damages for such false designation of origin.

COUNT III
(Common Law Unfair Competition)

39. The allegations of Paragraphs 1-38 above are incorporated by reference.

40. By the above-described conduct, Defendants have engaged in unfair competition under common law.

41. Plaintiffs have been damaged by such conduct in an amount to be determined at trial.

42. Unless stopped by an injunction, Defendants' behavior will continue and will cause Plaintiffs to suffer irreparable harm for which there is no adequate remedy at law. Therefore, Plaintiffs are entitled to injunctive relief. They are also entitled to damages for such conduct.

COUNT IV
(Unfair and Deceptive Trade Practices Under Mass. Gen. L. ch. 93A)

43. The allegations of Paragraphs 1-42 above are incorporated by reference.

44. Defendants are, and were at all relevant times, engaged in commerce in Massachusetts, as set forth above.

45. Defendants' acts as described hereinabove constitute unfair and deceptive acts and practices in violation of Mass. Gen. L. ch. 93A.

46. On information and belief, Defendants' unfair and deceptive acts and practices occurred primarily and substantially within Massachusetts.

47. On information and belief, Defendants' acts as described hereinabove were willful and knowing.

48. Plaintiffs have been harmed by such actions and are entitled to damages as set forth in Ch. 93A.

RELIEF REQUESTED

For the above reasons, Plaintiffs pray that the Court declare and a judgment be entered that:

- A. The Court has jurisdiction over the parties and subject matter of this action;
- B. Fionnoel's asserted trademark registrations above are valid and subsisting and are infringed by Defendants and further that Defendants have committed false designation of origin and unfair competition and have violated Mass. Gen. L. ch. 93A;
- C. Defendants, as well as all their agents, representatives, employees, assigns and all persons acting in concert or privity with them, are preliminarily and permanently enjoined from maintaining, using, disseminating, reproducing, promoting, distributing or otherwise using the marks K2 and K2 PROFESSIONAL SERVICES, or any mark confusingly similar thereto, and are permanently enjoined from using the marks K2 and K2 PROFESSIONAL SERVICES, or any mark confusingly similar thereto, as all or part of any mark, product configuration, or design;
- D. Defendants' infringement, false designation of origin and unfair competition have been willful;

E. Defendants shall deliver to Plaintiffs or to the Court for destruction all materials bearing the infringing marks or colorable copies of Fionnoel's marks;

F. Defendants shall file and serve a report in writing, and under oath, setting forth the manner and form in which they have complied with the Court's order and injunction;

G. Defendants shall pay to Plaintiffs any damages attributable to Defendants' infringement of Fionnoel's marks and their acts of unfair competition and shall account for all gains, profits, and advantages derived through those actions, but not less than a reasonable royalty, and pay such damages authorized by law, including 15 U.S.C. § 1117;

H. Defendants shall pay damages, and such multiple damages up to three times actual damages as may be awarded by the Court pursuant to Mass. Gen. L. ch. 93A, 15 U.S.C. § 1117, or other applicable law;

I. Defendants shall pay Plaintiffs their reasonable costs and attorneys' fees under Mass. Gen. L. ch. 93A, 17 U.S.C. § 1117, or other applicable law; and

J. Plaintiffs shall have such other and further relief as this Court may award.

JURY DEMAND

Plaintiffs demand a trial by jury of all issues so triable.

FIONNOEL AG, and

K2 PARTNERING SOLUTIONS, INC.,

By their attorneys,

Dated: October 20, 2010

/s/ Michael A. Albert

Michael A. Albert, BBO # 558,566

malbert@wolfgreenfield.com

Edward F. Perlman, BBO # 394,900

eperlman@wolfgreenfield.com

Hunter D. Keeton, BBO # 660,609

hkeeton@wolfgreenfield.com

WOLF, GREENFIELD & SACKS, P.C.

600 Atlantic Avenue

Boston, Massachusetts 02210

Tel. 617 646.8000

Fax 617 646.8646

EXHIBIT A

Int. Cls.: 35 and 42

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,531,241

Registered Nov. 11, 2008

**SERVICE MARK
PRINCIPAL REGISTER**

K2 PARTNERING SOLUTIONS

FIONNOEL AG (SWITZERLAND CORPORATION)
GRABENSTRASSE 25
CH-6340 BAAR
SWITZERLAND

FOR: EMPLOYMENT AGENCIES, RECRUITMENT OF PERSONNEL, CONSULTANCY IN HUMAN RESOURCES MANAGEMENT, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FOR: CONSULTATION AND ADVISORY SERVICES FOR COMPUTERS, CONSULTATION IN COMPUTER SOFTWARE, DESIGN OF COMPUTER SOFTWARE, IN CLASS 42 (U.S. CLS. 100 AND 101).

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

PRIORITY DATE OF 7-11-2007 IS CLAIMED.

OWNER OF INTERNATIONAL REGISTRATION 0944736 DATED 11-14-2007, EXPIRES 11-14-2017.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SOLUTIONS", APART FROM THE MARK AS SHOWN.

SER. NO. 79-046,728, FILED 11-14-2007.

SANDRA MANIOS, EXAMINING ATTORNEY

EXHIBIT B

Int. Cls.: 35 and 42

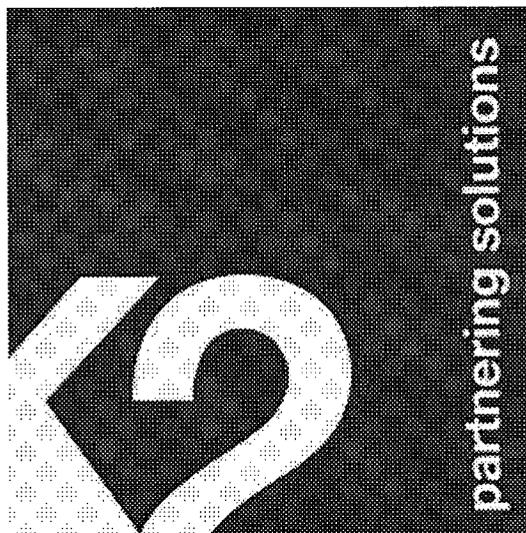
Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,524,403

Registered Oct. 28, 2008

**SERVICE MARK
PRINCIPAL REGISTER**



FIONNOEL AG (SWITZERLAND CORPORATION)
GRABENSTRASSE 25
CH-6340 BAAR
SWITZERLAND

FOR: EMPLOYMENT AGENCIES, RECRUITMENT OF PERSONNEL, CONSULTANCY IN HUMAN RESOURCES MANAGEMENT, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FOR: CONSULTATION AND ADVISORY SERVICES FOR COMPUTERS, CONSULTATION IN COMPUTER SOFTWARE, DESIGN OF COMPUTER SOFTWARE, IN CLASS 42 (U.S. CLS. 100 AND 101).

PRIORITY DATE OF 7-11-2007 IS CLAIMED.

OWNER OF INTERNATIONAL REGISTRATION
0944735 DATED 11-14-2007, EXPIRES 11-14-2017.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SOLUTIONS", APART FROM THE MARK AS SHOWN.

SER. NO. 79-046,727, FILED 11-14-2007.

SANDRA MANIOS, EXAMINING ATTORNEY

EXHIBIT C



**K2 Professional
Services**

HOME | SERVICES & SOLUTIONS | K2 PROFESSIONALS PAGE | CLIENTS | FAQ'S / CONTACT



Introducing K2Professional Services

K2Professional Services provides high end specialists to help clients implement and improve their supply chain solutions. We specialize in supply chain planning and have focused our expertise in the SCM/ APO and BI modules of SAP.

Experienced- *The K2Platinum Consultant Program*

On average, our K2Platinum consultants have seven years of SAP systems implementation or industry relevant experience. They have worked as SAP APO and BW functional and technical experts on some of the largest and most innovative projects in the world to date, and have supported hundreds of users in live systems.

Efficient- The K2Value Challenge

K2Professional Services has been able to provide highly skilled consultants at competitive rates because of our low overhead structure and our direct relationship with clients. Our teams have worked together for over five years and can offer the benefits of a common methodology and mutual understanding. Our principals work hands-on during client engagements. Our professionals have been engaged directly by clients who have previously used the largest consulting firms. We know how to assign K2Platinum and K2Professional consultants to achieve efficient and successful project execution.

**WELCOME TO
K2 PROFESSIONAL SERVICES**