

ESTTA Tracking number: **ESTTA466336**

Filing date: **04/10/2012**

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	Harman International Industries, Incorporated		
Entity	Corporation	Citizenship	Delaware
Address	8500 Balboa Blvd. Northridge, CA 91329 UNITED STATES		

Attorney information	Farah P. Bhatti Buchalter Nemer 18400 Von Karman Ave., Suite 800 Irvine, CA 92612 UNITED STATES trademark@buchalter.com, tm-docketing@harman.com, bshin@harman.com Phone:949.224.6291
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Registration Subject to Cancellation

Registration No	3524771	Registration date	10/28/2008
Registrants	Kevin Hurley 6910 S.W. 64th Street Miami, FL 33143 UNITED STATES Valerie Newman 6910 S.W. 64th Street Miami, FL 33143 UNITED STATES		

Goods/Services Subject to Cancellation

Class 009. First Use: 2007/04/01 First Use In Commerce: 2007/04/01
All goods and services in the class are cancelled, namely: Hands free electronic remote control providing seamless and interactive wireless operation and control of volume, song selection and other features on all digital music devices, including MP3 players

Grounds for Cancellation

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

Attachments	Petition to Cancel - ISTOMP.pdf (5 pages)(15992 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	/farah bhatti/
Name	Farah P. Bhatti
Date	04/10/2012

1. On November 21, 2011, Petitioner applied for federal registration of the marks DIGITECH ISTOMP and ISTOMP for “digital electronic devices for recording, manipulating, modeling, reproducing, and transmitting sound and music; audio signal processors and sound modification units namely, electronic sound effects pedals,” in International Class 9 under U.S. Trademark Application Serial Nos. 85/478325 and 85/478330 (the “Applications”).

2. The Applications were filed based on Petitioner’s bona fide intent to use the marks in connection with the goods.

3. Petitioner’s Applications have been refused registration under §2(d) [15 U.S.C. §1052(d)] of the Trademark Act, whereby the Examining Attorney has alleged that the Petitioner’s Marks are confusingly similar to the Registration.

4. On information and belief, Registrants have not used the ISTOMP mark in commerce in connection with the goods listed in the Registration.

5. On information and belief, Registrants have not used the ISTOMP mark in commerce for at least the last three years in connection with the goods listed in the Registration.

6. Registrants are presumed to have abandoned any trademark rights it may have had in the ISTOMP mark in connection with the goods listed in the Registration.

7. On information and belief, if Registrants ever used the ISTOMP mark, its use has been discontinued with intent not to resume such use.

8. Petitioner further seeks cancellation of the Registration based on fraud. The Registration was obtained fraudulently in that the Registrants never used the mark in interstate commerce in connection with the goods specified in the Registration.

9. On September 16, 2008, Registrants submitted a Statement of Use to the Trademark Office in which Registrants represented to the Trademark Office that they were using the ISTOMP mark in commerce in connection with the goods listed in the Registration. Registrants made this representation to induce the Trademark Office to issue a registration. Under Section 1001 of Title 18 of the United States Code, Registrants stated that they were submitting one specimen(s) showing the mark as used in commerce or in connection with any

item in the class of listed goods and/or services, consisting of “the mark on the device on the display screen.”

10. Said statement was made by the Attorney of Record, Michael Ries, on September 16, 2008, with the intent to induce agents of the United States Patent and Trademark Office to grant such registration, and reasonably relying upon the truth of said false statement, the United States Patent and Trademark Office did, in fact, grant such registration.

11. As of the current date, years after Registrants represented to the Trademark Office that they had used the ISTOMP mark in connection with the goods specified in the Registration, Registrants, in fact, are still in the process of developing the goods and have never used the mark in interstate commerce, nor have they sold any goods under the ISTOMP mark.

12. Registrants are not producing or selling any goods using the ISTOMP mark. Rather, Registrants are still in the process of developing such goods but do not have any finished products which use the mark, nor which are sold in interstate commerce.

13. Registrants have never used the ISTOMP mark in commerce in connection with the goods listed in the Registration.

14. The representations Registrants made to the Trademark Office on September 16, 2008 were false.

15. Registrants knew that the representations were false.

16. Registrants knowingly made material misrepresentations to the Trademark Office to procure Registration No. 3,524,771.

17. The Trademark Office relied on the representations in issuing Registration No. 3,524,771.

18. The Trademark Office would not have issued Registration No. 3,524,771 but for Registrants’ false representations.

19. Registrants' actions in the procurement of Registration No. 3,524,771 constitute fraud, thereby invalidating Registration No. 3,524,771. Accordingly, Registration No. 3,524,771 should be canceled in its entirety.

20. If Registrants are permitted to retain the Registration sought to be cancelled herein, Petitioner will be damaged by virtue of its inability to register its trademarks. Petitioner has much to be gained in being granted federal trademark registrations for use of Petitioner's Marks. The ongoing inability of Petitioner to do so will cause direct and irreparable harm to Petitioner, effectively limiting Petitioner's ability to protect and enforce its valuable trademarks.

WHEREFORE, Petitioner prays for judgment granting this petition and cancelling Registration No. 3,524,771.

Please direct all correspondence and communications in this cancellation to the undersigned. The Patent and Trademark Office is authorized to charge the filing fee to Deposit Account No. 500977.

Date: April 10, 2012

Respectfully Submitted,

Harman International Industries, Incorporated

/farah bhatti/

Farah P. Bhatti

Attorney for Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2012, I served a copy of the foregoing Petition to Cancel on the Registrant by mailing a copy thereof by First Class Mail, postage prepaid, addressed to Registrant at Registrant's address in the records of the Patent and Trademark Office as follows:

Kevin Hurley
Valerie Newman
6910 S.W. 64th Street
Miami, Florida 33143

/farah bhatti/
Farah P. Bhatti