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

Proceeding	92055643
Party	Plaintiff Monster Cable Products, Inc
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Submission	Motion to Amend Pleading/Amended Pleading
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONSTER CABLE PRODUCTS, INC., Petitioner, v. NEOVICTORY TECHNOLOGY CO., LTD., Registrant.	Cancellation No.: 92055643 Registration No.: 3737908 Mark: NEOVICTORY
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FIRST AMENDED PETITION TO CANCEL

MONSTER CABLE PRODUCTS, INC., a California corporation (“Petitioner”), whose address is 455 Valley Drive, Brisbane, CA 94005-1209, believes that it will be damaged by the continued registration of the mark “NEOVICTORY,” in International Class 9 for all goods contained in the application on the Principal Register, as shown in the above-referenced registration by NEOVICTORY TECHNOLOGY CO., LTD. (“Registrant”), and, pursuant to the Board’s July 25, 2012 order, hereby files this First Amended Petition to cancel same.

The amended grounds for cancellation are as follows:

1. Petitioner is the owner of U.S. Trademark Application No. 85231780 (“Petitioner’s Mark”).
2. On or about November 19, 2010, Petitioner received an Office Action for the above application refusing registration of Petitioner’s Mark on the grounds of likelihood of confusion with Registration No. 3,422,128 (the “Subject Registration”).

3. Upon receipt of the Office Action, Petitioner's counsel began researching the products listed in the Subject Registration and was unable to find any evidence of such products' availability in the United States nor was Registrant's online advertising directed to consumers in the United States.

4. As part of his research, Petitioner's counsel reviewed the file history of the application for the Subject Registration.

5. According to the Statement of Use ("SOU") filed on or about November 4, 2009, as attested to by Registrant's domestic representative, Registrant first made use in commerce of the following goods at least as early as October 13, 2009:

Protection devices, namely, helmets, protection masks, snow goggles, goggles, safety goggles; optical devices, namely, glasses; swimming goggles; hydrosopes; sunglasses; accessories for sunglasses and eyeglasses, namely, cases and cords; camera; television sets; earphones; loud speakers; microphones; hand-held electronic games adapted for use with television receivers only; video output game machine for use with televisions; communication devices, namely, headphones and mobile phones; and integrated circuits.

6. On information and belief, Registrant's SOU was false as it had not made use, or had made only token use, of its NEOVICTORY mark in commerce in connection with any of the goods listed in the SOU.

7. On or about November 6, 2011 Petitioner's counsel sent a letter to Registrant's domestic representative, Lin-Yun Cheng, at the address listed for the representative in the Subject Registration requesting evidence of Registrant's use of its NEOVICTORY mark in connection with the products listed in the Subject Registration.

8. Having received no response to his letter, on or about November 18, 2011 Petitioner's counsel visited the domestic representative's office, which is a single family home in a suburban neighborhood, at which no one answered the door, and left his business card with a note to contact him.

9. Receiving no communication from the domestic representative, Petitioner's counsel filed the original petition to cancel the Subject Registration on or about May 21, 2012.

Registrant Has Abandoned Its NEOVICTORY Mark.

10. Petitioner incorporates by reference the allegations contained in paragraphs 1-9 above.

11. On information and belief, Registrant has not used the NEOVICTORY mark in commerce for at least the last three years in connection with the goods listed in the Subject Registration.

12. Registrant is therefore presumed to have abandoned any trademark rights it may have in the NEOVICTORY mark in connection with the goods listed in the Subject Registration.

13. In light of Registrant's abandonment of trademark rights in the NEOVICTORY mark, Registration No. 3737908 should be canceled in its entirety.

Registrant Failed To Use Its NEOVICTORY Mark In Commerce.

14. Petitioner incorporates by reference the allegations contained in paragraphs 1-13 above.

15. On information and belief there was no bona fide use of Registrant's mark in commerce in the ordinary course of trade at the time Registrant filed its verified statement in its SOU pursuant to 15 U.S.C. § 1051(d)(1).

16. In light of Registrant's failure to make use, or having made only token use, in commerce its NEOVICTORY mark, Registration No. 3737908 should be canceled in its entirety.

WHEREFORE, the Petitioner will be damaged by the continued registration of the Subject Registration and prays that the Registration No. 3737908 be cancelled in its entirety.

Respectfully submitted,

MONSTER CABLE PRODUCTS,
INC.

By its attorneys,

Date: August 14, 2012

By: /mark r. leonard/
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Certificate of Service

I hereby certify that a true and complete copy of the foregoing Petitioner's FIRST AMENDED PETITION TO CANCEL has been served on NeoVictory Technology Co., Ltd. by mailing said copy on August 14, 2012, to Opposer's counsel: Lin-Yun Cheng, Pro-Tehtor International Services, 20775 Norada Court, Saratoga, CA 95070-3018.

/nikki abdallah/

Nikki Abdallah