

ESTTA Tracking number: **ESTTA489594**

Filing date: **08/17/2012**

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	Robert Mason		
Entity	Individual	Citizenship	UNITED STATES
Address	3916 Cleveland Ave Ft. Meyers, FL 33901 UNITED STATES		

Attorney information	Matthew H. Swyers, Esq. The Trademark Company 344 Maple Avenue West, Suite 151 Vienna, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com		
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**Registrations Subject to Cancellation**

Registration No	3824790	Registration date	07/27/2010
Registrant	Iser, Alexander R. 8218 East 71st Street Tulsa, OK 74133 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 037. First Use: 2009/12/07 First Use In Commerce: 2009/12/07 All goods and services in the class are cancelled, namely: Repair and maintenance of cellular telephones
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	4178380	Registration date	07/24/2012
Registrant	Alexander R. Iser 8218 E 71st Street Tulsa, OK 74133 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 037. First Use: 2009/12/07 First Use In Commerce: 2009/12/07 All goods and services in the class are cancelled, namely: Repair and maintenance of cellular telephones
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)		
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Registration No	4182309	Registration date	07/31/2012
Registrant	Alexander R. Iser 8218 East 71st Street Tulsa, OK 74133 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 037. First Use: 2009/12/07 First Use In Commerce: 2009/12/07 All goods and services in the class are cancelled, namely: Repair and maintenance of cellular telephones
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### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85600066	Application Date	04/17/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ROB THE PHONE DOCTOR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 2006/01/00 First Use In Commerce: 2006/01/00 Installation, maintenance and repair of cell phone related hardware		

Attachments	85600066#TMSN.jpeg ( 1 page )( bytes ) PTC.pdf ( 5 pages )(37657 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	/Matthew H. Swyers/
Name	Matthew H. Swyers, Esq.
Date	08/17/2012



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the matter of U.S. Registrations 3,824,790, 4,178,380, and 4,182,309

For the marks  **PHONEDOCTORS**  
A CELLULAR PHONE REPAIR AND REPLACEMENT COMPANY, PHONEDOCTORS, and PHONE DOCTORS,  
Registered on the Principal Register on July 27, 2010, July 24, 2012, and July 31, 2012 respectively.

Robert Mason,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. _____
	:	
Alexander R. Iser,	:	
	:	
Registrant.	:	

**PETITION TO CANCEL**

Petitioner, Robert Mason (hereinafter “Petitioner”), a United States Citizen located and doing business at 3916 Cleavland Avenue, Fort Meyers, Florida 33901, believes that he is and will continue to be damaged by the continued registrations of U.S. Registrations 3,824,790, 4,178,380, and 4,182,309 for the marks  **PHONEDOCTORS**  
A CELLULAR PHONE REPAIR AND REPLACEMENT COMPANY, PHONEDOCTORS, and PHONE DOCTORS and, accordingly, hereby petitions this honorable tribunal to cancel the same pursuant to 15 U.S.C. § 1064 and 37 C.F.R. § 2.111(b).

**Grounds for Cancellation**

As grounds for the instant Petition to Cancel, it is alleged that the continued registration of Registrant Alexander R. Iser’s (hereinafter “Registrant”) marks  **PHONEDOCTORS**  
A CELLULAR PHONE REPAIR AND REPLACEMENT COMPANY, PHONEDOCTORS, and PHONE DOCTORS (hereinafter “Registrant’s Marks”) as more fully displayed in U.S. Registration Nos. 3,824,790, 4,178,380, and 4,182,309 would be likely to cause confusion with Petitioner’s mark ROB THE PHONE DOCTOR which retains priority of use over Registrant’s Marks by virtue of its prior use in commerce in the United States.

## **Statement of Facts**

In support of the instant Petition to Cancel, it is alleged that:

1. Petitioner is the owner of the mark ROB THE PHONE DOCTOR (hereinafter "Petitioner's Mark") used on or in connection with installation, maintenance, and repair of cell phone related hardware.

2. Petitioner first used Petitioner's Mark in connection with the above-identified services in interstate commerce on or about January of 2006.

3. Petitioner's use of Petitioner's Mark in connection with the above-identified services has been continuous since on or about January of 2006.

4. Petitioner has invested significant sums of money in the promotion of Petitioner's Mark and the Petitioner's services in the United States.

5. As a result of the aforesaid, Petitioner has developed a valuable reputation and goodwill in his mark and has achieved a following among the relevant consuming public prior to the filing, registration and/or priority date of Registrant's application to register Registrant's Marks identified more fully in U.S. Registration Nos. 3,824,790, 4,178,380, and 4,182,309.

6. On April 17, 2012, Petitioner filed an application to register Petitioner's Mark used on or in connection with installation, maintenance, and repair of cell phone related hardware in International Class 37. The application received Trademark Application No. 85/600,066.

7. By Office Action dated August 6, 2012, the examining attorney issued an initial refusal to register Petitioner's Mark based upon the examining attorney's opinion that, if registered, Petitioner's mark would be likely to create a likelihood of confusion with Registrant's registered marks as displayed by U.S. Registration Nos. 3,824,790, 4,178,380, and 4,182,309, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

8. The Office Action dated August 6, 2012 referenced hereinabove was Petitioner's first notice that Registrant was using Registrant's Marks in the United States.

9. Based upon information and belief, Registrant is a United States Citizen located and doing business at 8218 East 71<sup>st</sup> Street, Tulsa, Oklahoma 74133.

10. Registrant is using Registrant's Marks in connection with repair and maintenance of cellular phones International Class 37.

11. Registrant filed U.S. Registration No. 3,824,790 with the United States Patent and Trademark Office on December 16, 2009.

12. Registrant filed U.S. Registration Nos. 4,178,380, and 4,182,309 with the United States Patent and Trademark Office on October 20, 2010.

13. Upon information and belief, Registrant first used Registrant's Marks in connection with the services covered by their registrations in the United States on December 7, 2009.

14. As such, Petitioner's rights in Petitioner's Mark has priority of use over Registrant's rights in Registrant's Marks, U.S. Registration Nos. 3,824,790, 4,178,380, and 4,182,309, inasmuch as Petitioner commenced its use of Petitioner's Marks in connection with his services in interstate commerce prior to the filing, registration, and/or priority of use date of the Registrant's registrations and use of any of Registrant's Marks.

15. Petitioner believes that consumers confronted with Registrant's marks will inevitably be confused and deceived into the mistaken belief that the Registrant's services have their origin or are in some manner connected with the Petitioner and/or Petitioner's services offered in connection with Petitioner's Mark.

16. The continued registration of Registrant's Marks confers upon Registrant rights to which he is not entitled and is inconsistent with the prior established rights of Petitioner in his mark.

17. By reason of the foregoing, Registrant will be seriously damaged by the continued registration of Registrant's Marks.

WHEREFORE Petitioner Robert Mason, by counsel, prays that the instant petition be granted and U.S. Registration Nos. 3,824,790, 4,178,380, and 4,182,309 be cancelled.

Respectfully submitted this 17<sup>th</sup> day of August, 2012.

The Trademark Company, PLLC  
/Matthew H. Swyers/  
Matthew H. Swyers, Esquire  
344 Maple Avenue West, Suite 151  
Vienna, VA 22180  
Tel. (703) 585-2077  
Fax (270) 477-4574  
mswyers@TheTrademarkCompany.com  
Counsel for Petitioner

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the matter of U.S. Registrations 3,824,790, 4,178,380, and 4,182,309

For the marks  **PHONEDOCTORS**  
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Robert Mason,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. _____
	:	
Alexander R. Iser,	:	
	:	
Registrant.	:	

**Certificate of Service**

I HEREBY CERTIFY that a true and accurate copy of the foregoing *Petition to Cancel* was served this 17<sup>th</sup> day of August, 2012 upon the Registrant via first class mail at the address listed on the TARR database as reported this day as follows:

Alexander R, Iser  
8218 East 71<sup>st</sup> Street  
Tulsa, OK 74133

And a copy to:

J. Daniel Beirute  
Law Office of J. Daniel Beirute  
9175 S. Yale Avenue, Suite 280A  
Tulsa, OK 74137

/Matthew H. Swyers/  
Matthew H. Swyers