

ESTTA Tracking number: **ESTTA491066**

Filing date: **08/27/2012**

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	Valach Motors s.r.o.		
Entity	Limited Liability Company	Citizenship	Czech Republic
Address	Rudna 778/74 Ostrava - Zabreh, 700 30 CZECH REPUBLIC		

Attorney information	Gordon Troy Gordon E. R. Troy, PC PO Box 368 Charlotte, VT 05445 UNITED STATES usptomail@webtm.com Phone:802 881-0640
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Registration Subject to Cancellation

Registration No	4177303	Registration date	07/17/2012
Registrant	Vogelsang Aeroscale 372 Legacy Falls Drive North Chapel Hill, NC 27517 UNITED STATES		

Goods/Services Subject to Cancellation

Class 028. First Use: 2009/07/05 First Use In Commerce: 2009/07/05 All goods and services in the class are cancelled, namely: Toy model miniature engines
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Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Registrant is Merely Distributor &/or Importer and not owner of mark. Registration should have been refused under Â§1, 15 U.S.C. 1051.

Related Proceedings	None
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85699700	Application Date	08/09/2012
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	VALACH MOTORS
Design Mark	
Description of Mark	The mark consists of the word VALACH above the word MOTORS with a stylized propeller separating the two words horizontally dissecting an oval with the propeller design superimposed outside of the area of the oval.
Goods/Services	Class 028. First use: First Use: 2008/08/16 First Use In Commerce: 2010/04/02 Engines for model and toy aircraft; Games and playthings, namely, engines for model and toy aircraft; Hobby grade motors for model aircraft; Replica scale engines for models of aircraft
Attachments	85699700#TMSN.jpeg (1 page)(bytes) 6121956.pdf (48 pages)(6281632 bytes)

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	/Gordon E. R. Troy/
Name	Gordon E. R. Troy
Date	08/27/2012

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

IN THE MATTER OF: Registration No. 4177303
INTERNATIONAL CLASS: 28
FOR THE MARK: VALACH MOTORS

VALACH MOTORS S.R.O.,

Petitioner,

-against-

VOGELSANG AEROSCALE, LLC,

Registrant.

Cancellation No.

Registration No. 4177303

PETITION FOR CANCELLATION OF REGISTRATION NO. 4177303

Petitioner Valach Motors, s.r.o., believes that it has been and continues to be damaged by the registration of the mark, VALACH MOTORS, and hereby petitions for cancellation of U.S. Registration No. 4177303 on the following grounds:

1. Petitioner Valach Motors s.r.o. (hereinafter "Valach") is a limited liability company organized and existing under the laws of the Czech Republic, with its principal place of business at Rudna 778/74, Ostrava-Zabreh, Czech Republic 70030.
2. Petitioner is the manufacturer and distributor of engines for model and toy aircraft, and replica scale engines for various models of aircraft. Attached hereto are screenshots from Petitioner's websites at www.valachmotors.com (Exhibit 1) and www.valachmotors.cz (Exhibit 2).

3. Petitioner is the applicant and owner of U.S. Trademark Registration serial number 85699700, filed on August 9, 2012, for the mark, VALACH MOTORS, for “Engines for model and toy aircraft; Games and playthings, namely, engines for model and toy aircraft; Hobby grade motors for model aircraft; Replica scale engines for models of aircraft,” in International Class 28. A copy of Petitioner’s application is attached hereto as Exhibit 3.

4. Registrant Vogelsang Aeroscale, LLC (hereinafter “Registrant”) is a limited liability company organized under the laws of the State of North Carolina, with its principal place of business at 372 Legacy Falls Drive North, Chapel Hill, NC 27517.

5. Registrant is the owner of the disputed mark, VALACH MOTORS, Reg. No. 4177303, registered on July 17, 2012, for “Toy model miniature engines” in International Class 28 (hereinafter “the Disputed Mark”). A copy of the trademark application file, serial number 85407725 (the “725 Application”), together with the registration certificate for Reg. No. 4177303, is attached hereto as Exhibit 4.

6. Registrant was a third party importer and distributor of Petitioner’s products and in no way related to Petitioner.

7. Registrant had no written consent from Petitioner to register the Disputed Mark in Registrant’s name

8. Registrant had no agreement with Petitioner stating that Registrant is the owner of the Disputed Mark in the United States.

9. Registrant was never assigned Petitioner’s rights to own the Disputed Mark, or any goodwill or business appurtenant thereto, for the United States.

10. Unbeknownst to Petitioner and completely without Petitioner's authorization, Registrant filed for registration of the Disputed Mark on August 25, 2011, claiming to be the rightful owner thereof.

11. Registrant initially sought registration of the word VALACH, but later amended the '725 Application to VALACH MOTORS, after the Trademark Office objected that "Valach" was primarily a surname.

12. As and for a specimen evidencing use in commerce of the Disputed Mark by Registrant, Registrant submitted to the Trademark Office a photograph of the box from one of Petitioner's products sold and shipped by Petitioner to Registrant, which packaging and product were and are manufactured by Petitioner.

13. Registrant's statement that the submitted specimen shows the Disputed Mark as used in commerce by Registrant, which statement is attested to in Registrant's mandatory declaration, was materially false and/or fraudulent.

14. Furthermore, contrary to Registrant's mandatory declaration, Registrant could not have believed that Registrant was the owner of the VALACH MOTORS mark.

15. Registrant's mandatory declaration was therefore materially false and/or fraudulent.

16. At the time Registrant made such materially false and/or fraudulent statements in its '725 Application, Registrant knew they were false or fraudulent.

17. Registrant made such material false and/or fraudulent statements in its '725 Application with the intent to deceive the Trademark Office into believing that Registrant was the rightful owner of the mark, VALACH MOTORS.

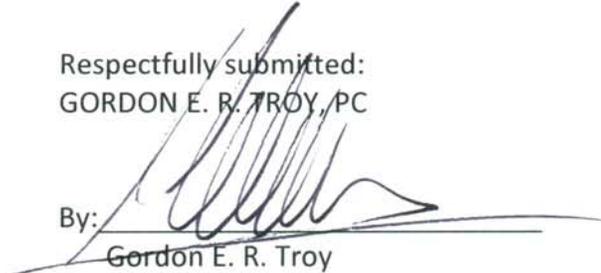
18. If the Trademark Office had known the truth, it would have refused to consider Registrant's application or to register the Dispute Mark in Registrant's name.

19. Consequently, Registrant's trademark application, serial number 85407725, is void *ab initio*, and Registrant's Mark, Reg. No. 4177303 must be cancelled.

WHEREFORE, Petitioner respectfully prays that Registrant's Mark, Reg. No. 4177303 be cancelled.

August 27, 2012

Respectfully submitted:
GORDON E. R. TROY, PC

By: 

Gordon E. R. Troy
Attorney for Petitioner

PO Box 368

Charlotte, VT 05445

(802) 881-0640 Phone

(646) 588-1962 Fax

gtroy@webtm.com Direct email

usptomail@webtm.com Service email

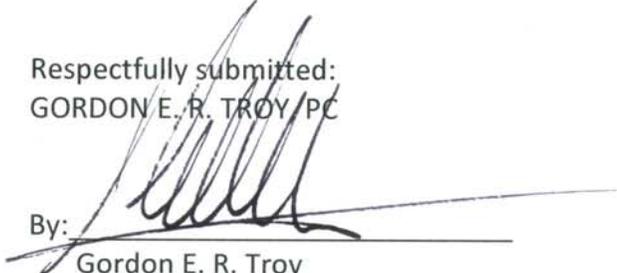
Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Petition for Cancellation of Registration Number 4177303 has been served on Registrant by depositing same with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

Vogelsang Aeroscale, LLC
372 Legacy Falls Drive North
Chapel Hill, NC 27517

on: August 27, 2012

Respectfully submitted:
GORDON E. R. TROY/PC

By: 

Gordon E. R. Troy
Attorney for Petitioner
PO Box 368
Charlotte, VT 05445
(802) 881-0640 Phone
(646) 588-1962 Fax
gtroy@webtm.com Direct email
usptomail@webtm.com Service email

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

IN THE MATTER OF: Registration No. 4177303
INTERNATIONAL CLASS: 28
FOR THE MARK: VALACH MOTORS

VALACH MOTORS S.R.O.,

Petitioner,

-against-

VOGELSANG AEROSCALE, LLC,

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Cancellation No.

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PETITION FOR CANCELLATION OF REGISTRATION NO. 4177303

Exhibit 1





VALACH MOTORS company is focused on the small-batch production of large volumes radial engines and the mass production of boxer and inline engines for use in aircraft models. These four-stroke engines are equipped with a processor-controlled ignition and diaphragm carburetors.

Engine lubrication is provided by a mixture of gasoline and oil. Production is carried out on modern CNC machines using quality materials. The heads are cast from aluminum alloy. Engines are supplied with a ring exhausts.

We wish you many pleasant experiences when flying with our engines.

Zdeněk Sládek
director

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Exhibit 2



DESIGNER OF RADIAL AIRCRAFT ENGINES

NOVINKY

MOTORY

PŘÍSLUŠENSTVÍ

STAVEBNICE

HOME

KONTAKTY



Google Translate

Select Language

Google Gadgets powered by Google



PRICES (pdf)

PROJEKTY 2012

PARTNEŘI

FOTOGALERIE

[AICHI](#)
[BRISTOL](#)
[LEHRTE 2010](#)
[Aerotec2009](#)
[Lehrte2009](#)
[Euroflugtag2009](#)
[La Ferte2009](#)
[Lehrte 2008](#)
[La Ferte 2008](#)
[La Ferte 2006](#)
[Sukhoi Su 26m](#)
[VM 170 B2-4T](#)
[D3A1 AICHI](#)
[TUNER W4X](#)

NOVINKY

NOVÝ MOTOR VM 120B2-4T

Firma Valach Motors zahájila výrobu prototypu nového motoru o objemu 120 ccm - VM 120B2-4T

Technická data :

Vrtání.....47 mm
 Zdvih.....35 mm
 Objem.....120ccm
 Váha.....3,25 kg

Rozměry



NOVÝ MOTOR VM 210B2-4T

Firma Valach Motors zahájila výrobu nového motoru o objemu 210 ccm - VM 210B2-4T

Technická data :

Vrtání.....52 mm
 Zdvih.....50 mm
 Objem.....210ccm
 Váha.....5,4 kg
 Vrtule.....34/16 - 36/14

Rozměry



NOVÁ CENA MOTORU VM 170B2-4T

Sériová produkce ve větším měřítku umožnila nabízet od 1.04.2011 motor VM 170B2-4T za novou cenu - 1998 EUR



NOVÝ MOTOR VM R9-1250

Firma Valach Motors zahájila výrobu prototypu nového hvězdicového motoru o objemu 1250 ccm - VM R9-1250.

Technická data :

Vrtání.....52 mm

Zdvih.....65 mm
 Objem.....1250 ccm
 Váha.....37 kg

[Foto...](#)

Rozměry



YAK 54

Letová ukázka modelu YAK - 54 s motorem VM R5-420.
 Pilot [Antonio Altea](#) ze Sardinie.

Rozpětí.....4 m
 Váha61 kg
 Motor.....VM R5-420
 Vrtule...Fiala Propellers.....40/20

[Video...](#)



PROJEKT BLÉRIOT

Firma Valach Motors se podílí na projektu přeletu kanálu La Manche s francouzským modelářským klubem Model Air Club d'Artois (le M.A.C.A.) při příležitosti 100. výročí úspěšného překonání kanálu La Manche ve vzduchu s motorovým letounem Blériot XI z 25. července 1909. Datum napovídá, že letos se bude konat už druhý pokus o tento přelet s 50% Blériot XI, který byl prvně neúspěšný z důvodu vybavení modelu slabým motorem. Tvůrci tohoto projektu nás proto oslovili s prosbou spolupráce o dodání hvězdicového pětivalcového motoru o objemu 420 ccm VM R5-420. O termínu konání akce se zatím jedná, nicméně uskuteční se v rozmezí květen až červenec 2011.

Veškeré informace o tomto projektu vč. fotografií a videí naleznete [zde](#):

[Foto...](#)

[Domovská stránka...](#)



Modelářský veletrh Friedrichshafen 2010

Ve dnech 4.-6.11.2010 se v německém Friedrichshafenu konal veletrh Faszination Modellbau, kde byly motory Valach Motors předváděny firmou Toni Clark practical scale GmbH, naším výhradním prodejcem motorů pro většinu zemí západní Evropy. Motory VM R5-420 a VM 170 B2-4T můžete shlédnout v čase 0:36-1,24 ukázkového [Videa...](#)

[Domovská stránka...](#)



TURNER W4X

Ve dnech 2.-3.10.2010 se konala ve švýcarském Hausen am Albis

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Exhibit 3

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VALACH MOTORS s.r.o.

VM R7-800/R5-420

OWNER'S INSTRUCTION MANUAL



It is of vital importance, before attempting to operate your engine, to read the general '**SAFETY INSTRUCTIONS AND WARNINGS**' section on pages 1-5 of this booklet and to strictly adhere to the advice contained therein.

Also, please study the entire contents of this instruction manual, so as to familiarize yourself with the controls and other features of the engine.

Keep these instructions in a safe place so that you may readily refer to them whenever necessary.

It is suggested that any instructions supplied with the aircraft, radio control equipment, etc., are accessible for checking at the same time.



VM R7-800

Safety instructions and warnings about your VM engine :

Remember that your engine is not a "toy", but a highly efficient internal-combustion machine whose power is capable of harming you, or others, if it is misused or abused. As owner, you, alone, are responsible for the safe operation of your engine, so act with discretion and care at all times.

If at some future date, your VM engine is acquired by another person, we would respectfully request that these instructions are also passed on to its new owner.

WARNINGS

These cover events which might involve serious (inextreme circumstances, even fatal) injury.

NOTES

These cover the many other possibilities, generally less obvious sources of danger, but which, under certain circumstances, may also cause damage or injury.



VM R5-420

SAFETY INSTRUCTIONS AND WARNINGS ABOUT YOUR VM ENGINE

The advice which follows is grouped under two headings according to the degree of damage or danger which might arise through misuse or neglect.

Never touch, or allow any object to come into contact with, the rotating propeller and do not crouch over the engine when it is running. A weakened or loose propeller may disintegrate or be thrown off and, since propeller tip speeds with powerful engines may exceed 220 metres per second, it will be understood that such a failure could result in serious injury, (see 'NOTES' section relating to propeller safety). Model engine fuel is poisonous. Do not allow it to come into contact with the eyes or mouth. Always store it in a clearly marked container and out of the reach of children. Model engine fuel is also highly flammable. Keep it away from an open flame, excessive heat, sources of sparks, or anything else which might ignite it.

Do not smoke or allow anyone else to smoke, near to it.

Never operate your engine in an enclosed space. Model engines, like automobile engines, exhaust deadly carbonmonoxide. Run your engine only in an open area. Model engines generate considerable heat. Do not touch any part of your engine until it has cooled. Contact with the muffler (silencer), cylinder head or exhaust header pipe, in particular, may result in a serious burn.

This engine was designed for model aircraft. Do not attempt to use it for any other purpose.

Mount the engine in your model securely, following the manufacturers' recommendations, using appropriate screws and locknuts.

Be sure to use the silencer (muffler) supplied with the engine. Frequent exposure to an open exhaust may

eventually impair your hearing.

Such noise is also likely to cause annoyance to others over a wide area.

Install a top-quality propeller of the diameter and pitch specified for the engine and aircraft. Locate the propeller on the shaft so that the curved face of the blades faces forward-i.e. in the direction of flight. Firmly tighten the propeller nut, using the correct size wrench.

Always check the tightness of the propeller nut and retighten it, if necessary, before restarting the engine,

particularly in the case of four-stroke-cycle engines. If a safety locknut assembly is provided with your engine, always use it. This will prevent the propeller from flying off in the event of a "backfire", even if it loosens. Also, check the tightness of all the screws and nuts before restarting the engine.

If you install a spinner, make sure that it is a precision made product and that the slots for the propeller blades do not cut into the blade roots and weaken them.

Discard any propeller which has become split, cracked, nicked or otherwise rendered unsafe. Never attempt to repair such a propeller: destroy it. Do not modify a propeller in any way, unless you are highly experienced in tuning propellers for specialized competition work such as pylon-racing.

FUEL AND LUBRICATION

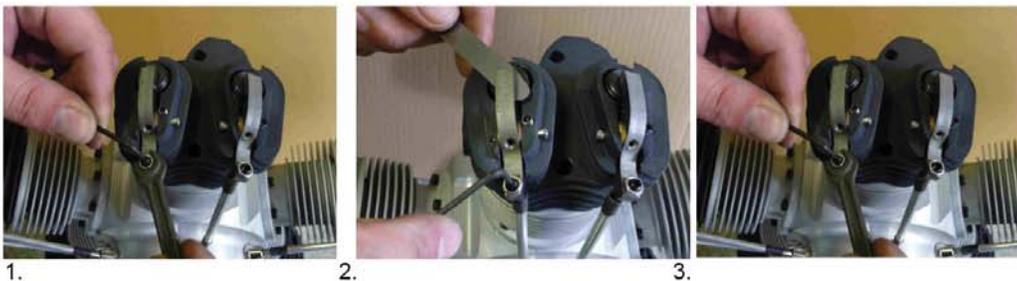
Petrol	1 : 25 – 30 (first running-in – 2 hours 1 : 20 !!)
Oil	full-synthetic 2 T
Rocker Arm	MOTUL Chain Lube Off Road (lube after 2 flight hours) or use similar lubrication with the same resistance up to 150°C



VALVE CLEARANCE ADJUSTMENT

All VM four-stroke engines have their valve (tappet) clearances correctly set before they leave the factory. However, if, after many hours of running time (cca 4 hours) have been logged, a loss of power is detected, or if the engine has to be disassembled or repaired as a result of an accident, valve clearances should be checked and readjusted, as necessary, with the aid of the VM Valve Adjusting Tool Kit.

The standard valve clearance, on both inlet and exhaust valves, is between 0.05mm and 0.1mm measured between valve stem and rocker arm. Use the 0.05mm and 0.1mm feeler gauges to check clearances.



1. Slacken check nut adjusting screw valve clearance
2. Adjustment valve clearance for extent of 0,1 mm
3. Tighten check nut adjusting screw valve clearance
4. After nut tightening, check the clearance again!!!

No clearance is very dangerous for the engine!!

SPARK PLUG

VM R7-800

Type - DENSO W 14MPR-U10
Thread M14 x 1
Distance of electrodes 0,5 mm

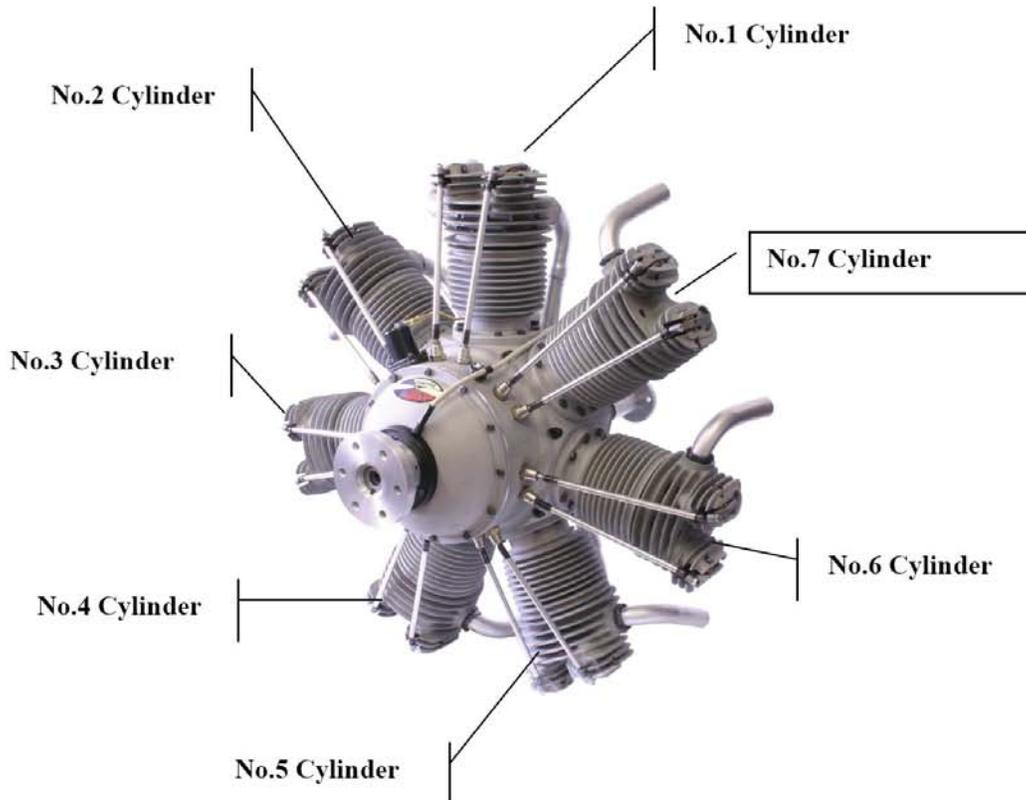
Type - Bosch CM-6RO 088
Thread M14 x 1.25
Distance of electrodes 0,5 mm

VM R5-420

NGK, type CM6



SEQUENCE OF CYLINDERS





Processor-controlled ignition
Power supply - 4,8 - 9 V
It is important to tighten the connectors nuts !!

CARBURETOR

A Walbro carburetor (figure 1) which is basically adjusted on the engine is used as standard. There are two rotary needles (L-low, H-high) on the sidewall. The H needle is used to adjust the high revolutions and the L needle is used to adjust low ones. Basic adjustment of both needles is represented by 2.5 turns from the tightened needle. Fine tuning of the carburetor is recommended after installation into the model.

Opening (figure 2) on the metal cap is used to compensate for atmospheric pressure and must remain free, in no case may be inserted into the fuel tank!! Tube (3) is not necessary, its use improves behavior of the engine.



(1)

(2)

(3)

Refilling of vaseline – after cca 10 flying hours refill 0,05 cl of vaseline (Picture 4 and 5)



(4)



(5)

PROPELLER

VM R7-800:

2-bladed 48/22 - 59/20

3-bladed 45/18 - 20

VM R5-420:

2-bladed 38/20 - 42/18

3-bladed 36/22 - 38/20



We recommend **Fiala Propellers**.





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VALACH MOTORS S.R.O.,

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-against-

VOGELSANG AEROSCALE, LLC,

Registrant.

Cancellation No.

Registration No. 4177303

PETITION FOR CANCELLATION OF REGISTRATION NO. 4177303

Exhibit 4

To: vogelsang@eero.com
Subject: S... L...
Sent: ...
Sent As: S...
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICE ACTION) A NOT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 85407725

MARK: VALACH

85407725

CORRESPONDENT ADDRESS:

VOGELSANG AEROSCALE
VOGELSANG AEROSCALE
372 LEGACY FALLS DR N
CHAPEL HILL, NC 27517-9535

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Vogelsang Aeroscale

CORRESPONDENT'S REFERENCE/DOCKET
NO: N/A

CORRESPONDENT E-MAIL ADDRESS:
info@vogelsang-aeroscale.com

EXAMINER'S AMENDMENT

ISSUE/MAILING DATE: **5/29/2012**

APPLICATION HAS BEEN AMENDED: In accordance with the authorization granted by Goetz Vogelsang on May 29, 2012, the trademark examining attorney has amended the application as indicated below. **Please advise the undersigned immediately of any objections. Otherwise, no response is necessary.** TMEP §707. Any amendments to the identification of goods and/or services may clarify or limit the goods and/or services, but may not add to or broaden the scope of the goods and/or services. 37 C.F.R. §2.71(a); see TMEP §§1402.06 *et seq.*

AMENDMENT TO SUPPLEMENTAL REGISTER

Applicant is amending the application to seek registration on the Supplemental Register. See 15 U.S.C. §1091; 37 C.F.R. §§2.47, 2.75(a); TMEP §§801.02(b), 816.

NE □ DRA □ ING OF MARK

Applicant is amending the drawing of the mark to VALACH MOTORS. *See* TMEP §807.14.

CLASSIFICATION OF GOODS

The application is amended to classify the goods in International Class 028. TMEP §1401.03(b); *see* 37 C.F.R. §2.85.

DISCLAIMER STATEMENT

The following disclaimer statement is added to the record:

No claim is made to the exclusive right to use □MOTORS□ apart from the mark as shown.

See 15 U.S.C. §1056(a); TMEP §§1213, 1213.08(a)(i).

The refusals and/or re□uirements set forth in the Office action dated December 5, 2011 have been overcome and/or addressed and all issues have been resolved.

/Hai-Ly H. Lam/
Trademark Attorney
Law Office 112
Office: 571-272-3354
Fax: 571-273-9112
Email: hai.lam@uspto.gov

PERIODICALL □ CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

**Response to Office Action
To the Commissioner for Trademarks:**

Application serial no. 50~~25~~ has been amended as follows:

ARGUMENTS

In response to the substantive refusal, please note the following:

The brand name is actually Valach Motors

I hereby would like to change the application to Valach Motors in hope that the addition of Motors does not create further problems.

My website: <http://www.team-aeroscale.com/valach.html>

SIGNATURE

Response Signature

Signature: /Goetz Vogelsang/ Date: 05/02/2012

Signatory Name: Goetz Vogelsang

Signatory Position: Owner

Signatory Phone Number: 9195336275

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either (1) the applicant or (2) a person(s) with legal authority to bind the applicant; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

Serial Number: 85407725

Internet Transmission Date: ed May 02 15:35:50 EDT 2012

TEAS Stamp: USPTO/ROA-76.182.42.250-2012050215355086

3745-85407725-4902d3ae499e15265186337b2c

cfa8a46-N/A-N/A-20120502153339924756

To: Vogelsang Aeroscale (info@vogelsang-aeroscale.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85407725 - VALACH - N/A
Sent: 12/5/2011 3:07:58 PM
Sent As: ECOM112@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)
[Attachment - 11](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE [USPTO]
OFFICE ACTION [OFFICIAL LETTER] ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85407725

MARK: VALACH

85407725

CORRESPONDENT ADDRESS:
VOGELSANG AEROSCALE
VOGELSANG AEROSCALE
372 LEGACY FALLS DR N
CHAPEL HILL, NC 27517-9535

CLICK HERE TO RESPOND TO THIS LETTER:
<http://www.uspto.gov/trademarks/teas/response/forms.jsp>

APPLICANT: Vogelsang Aeroscale

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:
info@vogelsang-aeroscale.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER [] WITHIN [] MONTHS OF THE

ISSUE/MAILING DATE ELO.

ISSUE/MAILING DATE: 12/5/2011

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SEARCH OF OFFICE'S DATABASE OF MARKS

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

SECTION 2(e) REFUSAL PRIMARILY MERELY A SURNAME

Registration is refused because the applied-for mark is primarily merely a surname. Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4); *see* TMEP §1211. The primary significance of the mark to the purchasing public determines whether a term is primarily merely a surname. *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 832, 184 USPQ 421, 422 (C.C.P.A. 1975); *In re Binion*, 93 USPQ2d 1531, 1537 (TTA 2009); *see* TMEP §§1211, 1211.01.

The following five factors are used to determine whether a mark is primarily merely a surname:

- (1) whether the surname is rare;
- (2) whether anyone connected with applicant uses the term as a surname;
- (3) whether the term has any recognized meaning other than as a surname;
- (4) whether the term has the structure and pronunciation of a surname; and
- (5) whether the term is sufficiently stylized to remove its primary significance from that of a surname.

See In re Binion, 93 USPQ2d 1531, 1537 (TTA 2009); *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1333-34 (TTA 1995); TMEP §1211.01.

Applicant has applied to register ALACH for Toy model miniature engines.

Please see the attached evidence from www.411.com, establishing the surname significance of the surname VALACH. This evidence shows the applied-for mark appearing over 100 times as a surname in a nationwide telephone directory of names.

Evidence that a word has no meaning or significance other than as a surname is relevant to determining whether the word would be perceived as primarily merely a surname. *See In re Petrin Corp.*, 231 USPQ 902, 903 (TTA 1986); TMEP §1211.02(b)(vi). The attached evidence from <http://www.merriam-webster.com/dictionary/valach> shows that the word VALACH does not appear in the dictionary. Thus, this word appears to have no meaning or significance other than as a surname.

Finally, the proposed mark is void of any stylization or design that would remove its primary significance from that of a surname.

Accordingly, the proposed mark is primarily merely a surname and registration must be refused under Section 2(e)(4) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Applicant must respond to the requirement(s) set forth below.

CLASSIFICATION OF GOODS

During preliminary review of the application, the Office incorrectly classified the goods in International Class 011. Therefore, applicant must amend the application to classify the goods in International Class 028. *See* 37 C.F.R. §§2.32(a)(7), 2.85; TMEP §§1401.02(a), 1401.03(b).

Applicant must adopt the appropriate international classification number for the goods and/or services identified in the application. The United States follows the *International Classification of Goods and Services for the Purposes of the Registration of Marks*, established by the World Intellectual Property Organization, to classify goods and services. 37 C.F.R. §2.85(a); TMEP §§1401.02, 1401.02(a).

SUPPLEMENTAL REGISTER ADVISOR

The applied-for mark has been refused registration on the Principal Register. Applicant may respond to the refusal by submitting evidence and arguments in support of registration and/or by amending the application to seek registration on the Supplemental Register. *See* 15 U.S.C. §1091; 37 C.F.R. §§2.47, 2.75(a); TMEP §§801.02(b), 816. Amending to the Supplemental Register does not preclude applicant from submitting evidence and arguments against the refusal(s). TMEP §816.04.

Although registration on the Supplemental Register does not afford all the benefits of registration on the Principal Register, it does provide the following advantages:

- The registrant may use the registration symbol ®;
- The registration is protected against registration of a confusingly similar mark under Trademark Act Section 2(d);
- The registrant may bring suit for infringement in federal court; and
- The registration may serve as the basis for a filing in a foreign country under the Paris Convention and other international agreements.

See 15 U.S.C. §§1052(d), 1091, 1094; TMEP §815.

RESPONSE TO OFFICE ACTION GUIDELINES

For this application to proceed toward registration, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond

to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end, the trademark will fail to register, and the application fee will not be refunded. See 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. Where the application has been abandoned for failure to respond to an Office action, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to live status. See 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. See 37 C.F.R. §§2.6, 2.66(b)(1).

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. See TMEP §§705.02, 709.06.

/Hai-Ly H. Lam/
Trademark Attorney
Law Office 112
Office: 571-272-3354
Fax: 571-273-9112
Email: hai.lam@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.sp. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions—therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

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Additional Suggestions

- Thomas L Valach** [PHONE](#)
- 📍 22 W 25th St | Minneapolis, MN | 55-59
-
- Alvera E Valach** [PHONE](#)

 528 Dearborn Ave Missoula, MT **Age:** 65+
Associated: Charles E Valach

Anna Valach

[PHONE](#)

 115 Shady Ave Cheswick, PA **Age:** 65+
Associated: John A Valach

Brenda L Valach

[PHONE](#)

 111 Pansy Pl Princeton, WV **Age:** 60-64
Associated: Theodore J Valach

Brett Valach

[PHONE](#)

 13723 83rd Ave Orland Park, IL **Age:** 25-29
Associated: Emil M Valach, Diane M Valach

Brett Valach

[PHONE](#)

 7839 W Arquilla Dr,
Apt 2B Palos Heights, IL **Age:** 25-29
Associated: Pamela R Valach, Emil M Valach, Di

Charles E Valach

[PHONE](#)

 528 Dearborn Ave Missoula, MT **Age:** 65+
Associated: Alvera E Valach

Cheryl Valach

[PHONE](#)

 428 Blue Ridge Dr Coraopolis, PA **Associated:** Mark J Valach

Chrissy L Valach

[PHONE](#)

 35 Oak Knoll Dr Lake Villa, IL **Age:** 30-34
Associated: Tonya L Valach

Christopher Valach

[PHONE](#)

🏠 5 Lazee Trl

Houston, TX

Age: 18-24

Associated: Kenneth J Valach, Jane P Valach, Th

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Lorrie Ann Valach	Oak Lawn, IL	40	📄 ✉ 🏠	View Details
R Valach	Oak Lawn, IL	75	📄 ✉ 🏠	View Details

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Daniel Valach [PHONE](#)
 200 E 8th St, Ste 101 Mountain Home, AR Job: [Renal Ventures Management](#), Director

Deryck J Valach [PHONE](#)
 7000 M-44 Rd Richmond, VA

🏠 7295 Moffatt Rd Richmond, BC

Donna K Valach

[PHONE](#)

🏠 4039 W 109th St Oak Lawn, IL

Age: 55-59
Associated: Robert M Valach

Edward J Valach

[PHONE](#)

🏠 2125 Norfolk Ave Westchester, IL

Age: 65+
Associated: Lillian J Valach, Rochelle S Valach

Eileen P Valach

[PHONE](#)

🏠 130 Holly Ave Darien, IL

Age: 55-59
Associated: Joseph M Valach, Theresa M Valach

Elaine T Valach

[PHONE](#)

🏠 827 Norfolk Rd Jenkintown, PA

Age: 55-59
Associated: Valarie E Valach, Anthony P Valach

Elfriede I Valach

[PHONE](#)

🏠 1600 Wind Castle Trl Indianapolis, IN

Elsie M Valach

[PHONE](#)

🏠 29 Center St Proctor, VT

Age: 60-64
Associated: Thomas M Valach

Emil M Valach

[PHONE](#)

🏠 13723 83rd Ave Orland Park, IL

Age: 60-64
Associated: Brett Valach, Diane M Valach

Ernest J Valach

[PHONE](#)

Robert H Valach

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1360 Marshall Dr SE

Salem, OR

Age: 65+

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R Valach	Oak Lawn, IL	75		View Details

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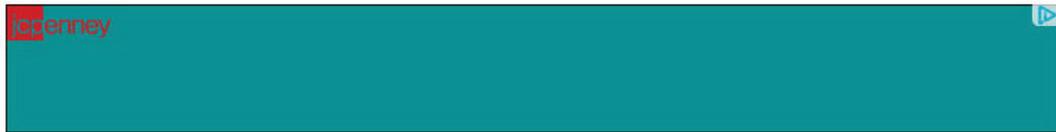


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Trademark/Service Mark Application, Principal Register

Serial Number: 50025

Filing Date: 025/2011

To the Commissioner for Trademarks:

MARK: Valach (Standard Characters, see [mark](#))

The literal element of the mark consists of Valach.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Vogelsang Aeroscale, a limited liability company legally organized under the laws of North Carolina, having an address of

372 Legacy Falls Drive North
Chapel Hill, North Carolina 27517
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 027: Toy model miniature engines

In International Class 027, the mark was first used at least as early as 07/05/2009, and first used in commerce at least as early as 07/05/2009, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) digital image of product packaging currently used in commerce.

[Specimen File 1](#)

The applicant's current Correspondence Information:

Vogelsang Aeroscale
Vogelsang Aeroscale
372 Legacy Falls Drive North
Chapel Hill, North Carolina 27517
9195336275(phone)
info@vogelsang-aeroscale.com (authorized)

A fee payment in the amount of \$25 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and

the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; 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 the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Goetz Vogelsang/ Date Signed: 08/25/2011

Signatory Name: Goetz Vogelsang

Signatory Position: Owner

RAM Sale Number: 8000

RAM Accounting Date: 08/26/2011

Serial Number: 85407725

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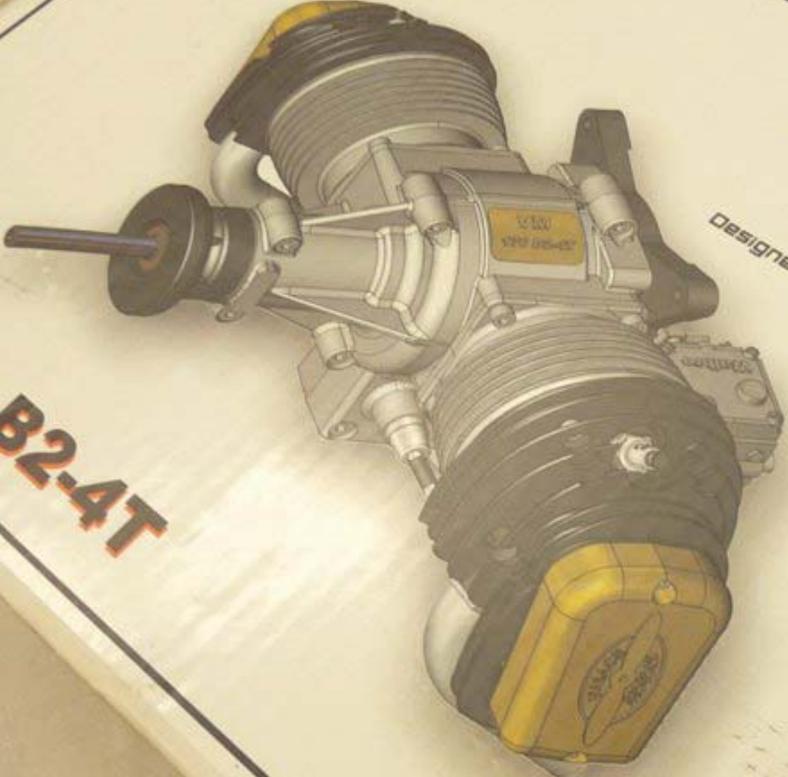
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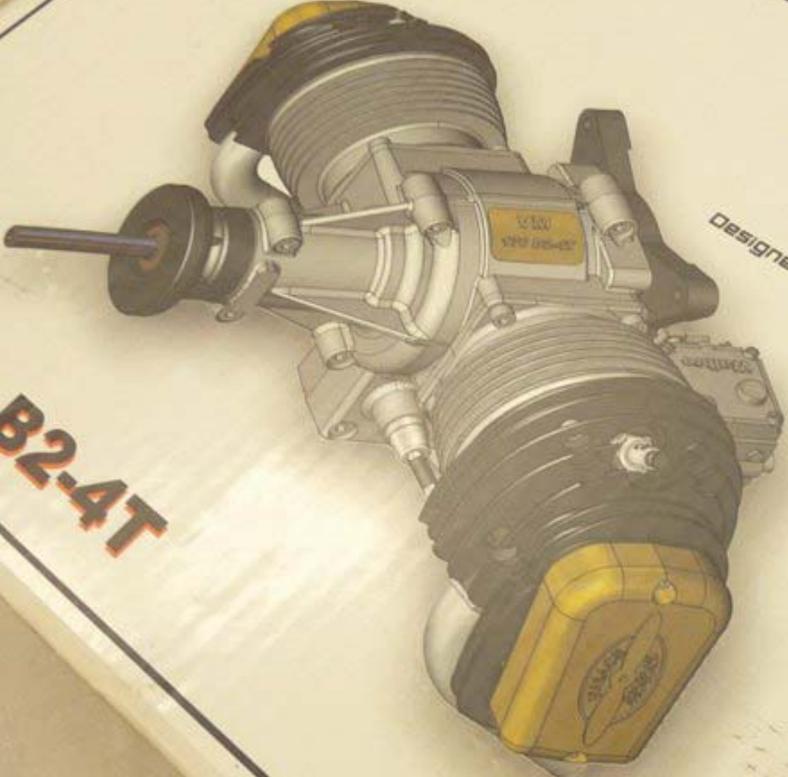
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Designer of radial Aircraft Engines

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Designer of radial Aircraft Engines