

ESTTA Tracking number: **ESTTA578343**

Filing date: **12/23/2013**

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	Headcovers Unlimited, Inc.		
Entity	Corporation	Citizenship	Texas
Address	214 S. Iowa Ave. League City, TX 77573 UNITED STATES		

Attorney information	Thomas P. Philbrick ALLMARK TRADEMARK 2089 Avy Ave. Menlo Park, CA 94025 UNITED STATES tom@allmarktrademark.com, allmarktrademark@gmail.com Phone:(650)233-2789		
----------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

Registration Subject to Cancellation

Registration No	2867002	Registration date	07/27/2004
International Registration No.	NONE	International Registration Date	NONE
Registrant	Tilley Endurables Inc. 60 Gervais Drive Toronto, Ontario, CAX M3C1Z3 ONC		

Goods/Services Subject to Cancellation

Class 025. First Use: 2003/08/29 First Use In Commerce: 2004/03/24 All goods and services in the class are cancelled, namely: HATS FOR GOLF MARKET

Grounds for Cancellation

Genericness	Trademark Act section 23
Abandonment	Trademark Act section 14

Attachments	HEADCOVERS petition to cancel for filing.pdf(537705 bytes) CERTIFICATE OF SERVICE for cancellation for filing.pdf(90140 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	/Thomas P. Philbrick/
Name	Thomas P. Philbrick
Date	12/23/2013

known address of record as indicated on the USPTO's TARR database is 60 Gervais Drive, Toronto, Ontario M3C1Z3 CANADA.

2. Petitioner has used the mark HEADCOVERS UNLIMITED in interstate commerce since at least as early as December 31, 2002 in conjunction with a variety of goods and services including, "Headwear and scarves, excluding those intended for use in golf," in International Class 25. Petitioner is the owner of U.S. Serial No. 85690850 (Petitioner's mark) for the mark HEADCOVERS UNLIMITED filed on a Section 1(a) basis, on July 31, 2012, used in connection with "Headwear and scarves, excluding those intended for use in golf," in International Class 25. Based on Petitioner's substantial interstate use of its HEADCOVERS UNLIMITED mark in commerce and resulting goodwill, Petitioner believes that it is being and will continue to be damaged by registration of No. 2,867,002 as it is preventing Petitioner from being able to secure a federal registration for Petitioner's mark.

3. On June 25, 2013, Petitioner was issued a FINAL office action from the USPTO refusing its application serial number 85690850 based on an alleged Section 2(d) conflict with Respondent's registration No. 2,867,002. In the FINAL office action, the Examining Attorney stated in part that, "For the reasons set forth below, the refusal under Trademark Act Section 2(d) is now made FINAL with respect to U.S. Registration No(s). 2867002." Petitioner has standing to file this cancellation as the registration of its HEADCOVERS UNLIMITED mark in Class 25 (as identified in Serial Number 85690850) will be refused (causing irreparable damage and injury to Petitioner) if registration number 2,867,002 is not successfully cancelled and removed from the Principal Register of trademarks.

4. If Respondent's registration is not successfully cancelled, Respondent will own the *prima facie* exclusive right to use the HEADCOVERS mark in International Class 25 in

connection with goods that the Examining Attorney has deemed “confusingly similar” to Petitioner’s HEADCOVERS UNLIMITED goods identified in Petitioner’s mark. Such a registration is a source of damage and injury to Petitioner as it will prevent the USPTO from issuing a registration to Petitioner based on its pending application serial number 85690850.

5. Through its investigations to date, on information and belief, Petitioner alleges that the Respondent’s mark has been abandoned for over 3 years due to nonuse with intent not to resume use. (and nonuse for three consecutive years shall be *prima facie* evidence of abandonment under TTAB rules.)

6. On information and belief, the term “HEADCOVERS” is generic for a “head covering” or “hat” for one’s head.

7. On information and belief, the term HEADCOVERS is recognized by consumers in the trade as generic terminology for headwear, hats and/or head coverings.

8. In the event that HEADCOVERS is not found to be generic and therefore incapable of registration as a trademark for Respondent’s goods, Petitioner alleges that it has priority of use given the abandonment of Respondent’s mark. Such priority is established by Petitioner’s application filing date of July 31, 2012 for serial number 85690850.

9. Given the apparent abandonment of Respondent’s mark, Petitioner submits that if, as the trademark examining attorney contends, Petitioner’s mark so resembles Respondent’s mark as to be likely, when applied to the goods and/or services of the Petitioner, to cause confusion (under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d)] , then the registration sought to be maintained by Respondent (Reg. No. 2867002) should be cancelled because Petitioner has priority of use as its mark is currently in use in commerce and not abandoned.

10. For the foregoing reasons, Respondent is not entitled to the continued registration of U.S. reg. no. 2867002 for the mark HEADCOVERS as it has been abandoned in International Class 25 and Petitioner therefore has priority of use in commerce for a mark alleged by the examining attorney to be confusingly similar. As a separate ground for cancellation of Respondent's registration, on information and belief, Petitioner submits that the term "HEADCOVERS" is generic and therefore cannot serve as a trademark for Respondent's specified goods.

WHEREFORE, Petitioner prays that this cancellation be granted in its favor and that U.S. Reg. no. 2867002 for the mark HEADCOVERS be cancelled in its entirety and removed from the Principal Register of trademarks.

DATED this 23rd day of December, 2013.

Respectfully submitted,

Headcovers Unlimited, Inc.

By: 

Thomas P. Philbrick, Esq.
John E. Russell, Esq.
Attorneys for Petitioner

ALLMARK TRADEMARK®
2089 Avy Ave.
Menlo Park, CA 94025

Telephone: (650)233-2789
Facsimile: (650)233-2791
Email: tom@allmarktrademark.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITION TO CANCEL has been served on Respondent and Respondent's attorney of record by mailing said copy on December 23, 2013 via First Class Mail, postage fully prepaid to:

Millen, White, Zelano & Braniganm P.C.
Attn: Jeffrey A. Smith, Esq.
2200 Clarendon Blvd., Suite 1400
Arlington, VA 22201

Tilley Endurables Inc.
Attn: Legal Department
60 Gervais Drive
Toronto, Ontario M3C 1Z3
CANADA

By: 

Thomas P. Philbrick

Dated: 12/23/2013