

ESTTA Tracking number: **ESTTA642815**

Filing date: **12/05/2014**

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

Proceeding	92059416
Party	Plaintiff Litera Corporation
Correspondence Address	REBECCA L CAGE BROOKS PIERCE ET AL PO BOX 26000 GREENSBORO, NC 27420 UNITED STATES rcage@brookspierce.com, dsar@brookspierce.com
Submission	Motion for Summary Judgment
Filer's Name	Rebecca L. Cage
Filer's e-mail	rcage@brookspierce.com
Signature	/RebeccaLCage/
Date	12/05/2014
Attachments	GREENSBORO- #934062-v1-Litera_-_Motion_for_Summary_Judgment_(LITTERA_LINE).pdf(31 6099 bytes ) Ex. 1 - Affidavit.pdf(800131 bytes )

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

In the matter of Trademark Registration No. 4322704

LITERA CORPORATION,	)	
	)	Cancellation No. 92059416
Petitioner,	)	
	)	Registration No. 4322704
v.	)	
	)	Issued: April 23, 2013
XELES WORLDWIDE CORP.,	)	
	)	Mark: LITTERA LINE
Registrant.	)	

**PETITIONER’S MOTION FOR SUMMARY JUDGMENT**  
**AND MEMORANDUM OF LAW IN SUPPORT**

Litera Corporation (“Petitioner”), by and through the undersigned counsel and pursuant to Rule 56 of the Federal Rules of Civil Procedure, 37 C.F.R. § 2.127, and Section 528 of the Trademark Trial and Appeal Board Manual of Procedure, hereby moves the Trademark Trial and Appeal Board (the “Board”) for an Order Granting Summary Judgment in this cancellation proceeding in favor of the Petitioner and cancelling U.S. Registration No. 4322704 (the “Registration”) on the grounds that Xeles Worldwide Corp. (“Registrant”) has abandoned the mark LITTERA LINE. Petitioner submits that there exists no genuine dispute as to any material fact in this matter that would preclude summary judgment being granted in favor of Petitioner and that Petitioner is entitled to judgment as a matter of law.

**I. STATEMENT OF UNDISPUTED FACTS**

On May 22, 2012, Registrant filed an application under section 66(a) of the Lanham Act, seeking to register the mark LITTERA LINE in connection with the following:

- a. IC 009: Electronic notice boards; interfaces for computers; blank optical data media; computer software for creating, uploading, transmitting, receiving, editing, extracting, encrypting, decrypting, displaying, storage and organizing

of text, graphic, and electronic content; computer game programs; computer programs for educational and entertainment purposes, namely, computer games, software for teaching science, art, music, reading; record players; downloadable electronic publications, namely, newsletters, magazines, articles, blogs in the field of entertainment, photography, computer and video games, technology; downloadable computer programs for creating, uploading, transmitting, receiving, editing, extracting, encrypting, decrypting, displaying, storage and organizing of text, graphics, images, and electronic publications; downloadable computer programs, namely, operating systems programs, data synchronization programs, program tools for developing applications for personal and handheld computers; messaging software for paging messaging; database synchronization software; software for accessing, browsing and searching through online databases.

- b. IC 038: Electronic bulletin board services; information about telecommunication; providing internet chatrooms; providing user access to a global computer network; providing access to databases; providing telecommunications connections to a global computer network; electronic message sending; computer aided transmission of messages and images; sending of telegrams; transmission of telegrams; electronic mail; communications by fiber optic networks; communications by computer terminals.
- c. IC 041: Publication of books; game services provided on-line from a computer network; providing on-line non-downloadable electronic publications, namely, magazines, newsletters, blogs, articles featuring in the field of entertainment, photography, computer and video games, technology; electronic desktop publishing; publication of electronic books and journals on-line; publication of texts, other than publicity texts; writing of texts, other than publicity texts.
- d. IC 042: Recovery of computer data; graphic arts designing; installation of computer software; consultancy in the field of computer hardware, namely, consulting services in the fields of selection, implementation and use of computer hardware; computer software consultancy; updating of computer software; maintenance of computer software; providing search engines for obtaining data on the internet; data conversion of computer programs and data, not physical conversion; providing of information in the field of computer software and web application by means of internet and other computer networks or electronic communication networks; computer system design; duplication of computer programs; computer software design; creating and maintaining web sites for others; computer programming.

On April 23, 2013, the Registration was issued under Section 66(a) of the Lanham Act. *See* Petition for Cancellation, at ¶¶ 13, 14 (Doc. 1); Answer to Petition for Cancellation, at ¶¶ 13, 14 (Doc. 4).

Petitioner filed its application Serial No. 86006172 for the trademark LITÉRA SYNC on July 10, 2013. By Office Action dated May 14, 2014, Petitioner's application Serial No. 86006172 to register the trademark LITÉRA SYNC was refused registration based on Section 2(d) of the Lanham Act, in view of, *inter alia*, the Registration sought to be cancelled herein. *See* Doc. 1, at Ex. B.

On June 20, 2014, Petitioner filed the petition to cancel the Registration with respect to all classes of goods/services identified in the Registration asserting, among other things, that Registrant has abandoned the LITTERA LINE mark due to its failure to use and permanent cessation of use of the mark in commerce in the United States with no intention to resume use of the mark. Doc. 1, at ¶¶ 26-29. Registrant filed its Answer to the Petition for Cancellation on July 30, 2014. *See* Doc. 4. Petitioner served its Initial Disclosures on Registrant on September 26, 2014. Affidavit of Rebecca L. Cage ("Cage Aff."), at ¶ 4, attached hereto and incorporated herein by reference, as Exhibit 1.

On October 6, 2014, Petitioner served Petitioner's First Set of Requests for Admissions to Registrant (the "RFAs") by e-mailing a copy of the RFAs to Registrant's counsel in accordance with the parties' agreement to accept service via email in this proceeding. *See* Cage Aff. at ¶ 5 & Ex. A. A copy of the RFAs are attached as Exhibit A to the Cage Affidavit. The initial deadline for filing a response to the RFAs was November 5, 2014. Counsel for Registrant contacted counsel for Petitioner acknowledging that November 5, 2014 was the deadline for responding to the RFAs and requesting an extension of time to respond to the RFAs. *See* Cage

Aff. at ¶ 6 & Ex. B. Petitioner's counsel responded to Registrant's request and agreed to extend the deadline for responses to November 12, 2014. *See* Cage Aff. at ¶ 7 & Ex. B. Those deadlines have passed. To date, Registrant has not served responses, or otherwise responded, to the RFAs. *Id.*, at ¶ 8.

Petitioner's RFAs include the following requests:

1. Admit that you do not invest any monetary resources into marketing or advertising any goods or services offered in connection with the term "LITTERA LINE" within the United States of America.
2. Admit that you do not invest any monetary resources into promoting any goods or services offered in connection with the term "LITTERA LINE" within the United States of America.
3. Admit that you have not sold or transported any goods in connection with the term "LITTERA LINE" mark in the United States of America.
4. Admit that you have not performed or delivered any services in connection with the term "LITTERA LINE" mark in the United States of America.
5. Admit that as of April 23, 2013, Registrant did not possess a bona fide intent to use the term "LITTERA LINE" as a trademark for the goods and services identified in USPTO Registration No. 4322704.
6. Admit that at no time since April 23, 2013, has Registrant possessed a bona fide intent to use the term "LITTERA LINE" as a trademark for the goods and services identified in USPTO Registration No. 4322704.
7. Admit that Registrant has abandoned USPTO Registration No. 4322704.
8. Admit that as of April 23, 2013, Registrant possessed no documents with respect to the use of the term "LITTERA LINE" in the United States of America in connection with any goods or services.
9. Admit from April 23, 2013 to the present, Registrant possessed no documents with respect to the use of the term "LITTERA LINE" in the United States of America in connection with any goods or services.

*See* Cage Aff., at Ex. A.

## II. SUMMARY JUDGMENT STANDARD

The Federal Rules of Civil Procedure generally apply to proceedings before the Board. 37 C.F.R. § 2.116(a). A party to a proceeding may move for summary judgment on all or on parts of a claim, as provided by Fed. R. Civ. P. 56. Summary judgment is appropriate when the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); TBMP § 528.01. A summary judgment proceeding is regarded as a “salutary method of disposition,” and the Board does not hesitate to dispose of cases on summary judgment where appropriate. TBMP § 528.01; *see also Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1562, 4 USPQ2d 1793 (Fed. Cir. 1987).

In a summary judgment proceeding, the burden is on the movant to demonstrate the absence of any genuine dispute of material fact and that it is entitled to judgment as a matter of law. *Fram Trak Industries, Inc. v. WireTracks, LLC*, Cancellation No. 92043947, at 10 (TTAB Jan. 23, 2006) (precedential) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-37 (1986)). In turn, a material fact is a fact that could have legal impact on the outcome of the case. *See Institut Nat’l Des Appellations d’Origine v. Brown-Forman Corp.*, 47 USPQ2d (BNA) 1875, 1879 (TTAB May 29, 1998) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The burden of the moving party may be met by showing “that there is an absence of evidence to support the nonmoving party’s case.” *See Celotex*, 477 U.S. at 325.

If movant meets its burden, the non-movant must proffer countering evidence to show there is a genuine dispute for trial. *Octocom Systems Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 U.S.P.Q.2d 1783, 1786 (Fed. Cir. 1990). The evidence presented should be viewed in the light most favorable to the non-moving party. *Lloyd’s Food Products Inc. v. Eli’s Inc.*, 987 F.2d 766,, 767, 25 U.S.P.Q.2d 2027, 2029 (Fed. Cir. 1993). Even so, the nonmoving

party may not rest on the mere allegations of its pleadings and assertions of counsel, but must designate specific portions of the record or produce additional evidence showing the existence of a genuine issue of material fact for trial. *Fram Trak*, Cancellation No. 92043947, at 11; TBMP § 528.01.

Petitioner seeks summary judgment on its claim that the Registration should be cancelled because the undisputed facts show that the LITTERA LINE mark has not been used for the covered goods/services in the United States subsequent to registration on April 23, 2013; Registrant has no intention to resume use of the mark; and Registrant has, therefore, abandoned said mark. *See* 15 U.S.C. § 1127. Petitioner is not asserting in this motion that the Registration should be cancelled based on a likelihood of confusion under 15 U.S.C. 1052(d), which claim would be moot upon granting of summary judgment in favor of Petitioner on its abandonment claim.

### **III. ARGUMENT**

#### **A. Petitioner has Standing to Bring Petition for Cancellation of the Registration**

The Lanham Act allows for cancellation of a Principal Register registration by anyone “who believes that he is or will be damaged . . . by the registration.” 15 U.S.C. § 1064; *see also Golden Gate Salami Co. v. Gulf States Paper Corp.*, 332 F.2d 184, 188, 141 U.S.P.Q. 661, 664 (CCPA 1964) (quoting and explaining the statute). “The party seeking cancellation must prove two elements: (1) that it has standing; and (2) that there are valid grounds for canceling the registration.” *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945, 55 USPQ2d 1842 (Fed. Cir. 2000) (citing *International Order of Job's Daughters v. Lindeburg & Co.*, 727 F.2d 1087, 1091, 220 USPQ 1017, 1019 (Fed. Cir. 1984)). Standing is met where the party seeking cancellation believes that it is likely to be damaged by the registration. *Id.*

Petitioner has standing to bring this cancellation proceeding because it is the owner of the following marks and respective trademark registrations (collectively with application Serial No. 86006172, “Petitioner’s Marks”):

<b>Trademark</b>	<b>Reg. No.</b>	<b>Registration Date</b>	<b>Goods</b>
<b>LITERA</b>	2751390	Aug. 12, 2003	Computer software for collaborative documents
<b>LITÉRA IDS</b>	4055373	Nov. 15, 2011	Computer software which allows multiple users to collaborate on a single document, which inserts digital signatures and which archives and retrieves data according to special search criteria defined by the user
<b>LITÉRA GALAXY</b>	4332878	May 7, 2013	Computer software for custody-controlled document collaboration and workflow management
<b>LITÉRA SECURE FILE TRANSFER</b>	4379250	May 21, 2013	Computer software for securely sending encrypted emails and attachments, transferring large electronic files, and enabling advanced electronic signatures
<b>LITÉRA SECURE WEB CONTENT</b>	4383363	May 28, 2013	Computer software for securely publishing documents to the Web and preventing the same content from being copied, downloaded, saved or printed

*See Cunningham*, 55 USPQ2d at 1844 (ownership of pleaded registration establishes standing).

A true and accurate printout of the current status and title of the above registrations, as obtained through the on-line Trademark Status and Document Retrieval (TSDR) System of the USPTO was attached as Exhibit A to the Petition to Cancel. *See Doc. 1.*

Petitioner is also the owner of application Serial No. 86006172, for the trademark LITÉRA SYNC for “Computer software for secure file synchronization,” in International Class 009. A true and accurate printout of the current status and title of application Serial No.

86006172 was attached as Exhibit B to the Petition for Cancellation. *See* Doc. 1. The pending application for registration of the LITÉRA SYNC mark is blocked from registration by the Registration at issue and is currently suspended. The continued registration of the LITTERA LINE mark damages Petitioner with respect to its use of Petitioner's Marks. *See Fram Trak*, Cancellation No. 92043947, at 12 (concluding petitioner has standing where mark at issue in cancellation proceeding was cited as a bar to the registration of one of petitioner's pleaded trademark applications).

Petitioner, therefore, has standing to bring this petition. In addition, Registrant has not challenged Petitioner's standing to bring the Petition for Cancellation.

**B. Registrant Admits That It Has Abandoned the Mark and That It Has No Intent to Use the LITTERA LINE Mark in Commerce in the United States**

To prevail on a claim for cancellation on the ground of abandonment, a party must prove abandonment of the mark as the result of nonuse by the registrant. *On-Line Careline, Inc. v. Am. Online*, 56 USPQ2d 1471, 1476 (Fed. Cir. 2000); 15 U.S.C. § 1127. Abandonment may be proven where the evidence establishes a period of nonuse of the relevant mark for a period of less than three years coupled with proof of intent not to resume use. *Dragon Bleu (SARL) v. VENM, LLC*, Opposition No. 91212231, at 13-14, 16 (TTAB Dec. 1, 2014) (precedential) (citing *Imperial Tobacco Ltd. v. Philip Morris Inc.*, 899 F.2d 1575, 14 USPQ2d 1390 (Fed. Cir. 1990); *see also Rivard v. Linville*, 133 F.3d 1446, 45 USPQ2d 1374, 1376 (Fed. Cir. 1998) (“Where a registrant has never used the mark in the United States because the registration issued on the basis of a foreign counterpart registration ... cancellation is proper if a lack of intent to commence use in the United States accompanies the nonuse.”).

Although proof of use is not a requirement to obtain registration based on section 66(a), upon registration, Section 66(a) registrations are subject to the same use requirements as

registrations issued on the basis of use. *See Dragon Bleu*, Opposition No. 91212231, at 15. Registrant must, therefore, use the LITTERA LINE mark in commerce in the United States in order to avoid abandonment of the Registration. *Id.* (citing *Saddlesprings, Inv. V. Mad Croc Brands, Inc.*, 104 USPQ2d 1948, 1951 (TTAB 2012)).

In *Dragon Bleu*, a recent case of first impression, the TTAB held that the earliest point in time from which the period of nonuse may be measured for an abandonment claim with respect to a Section 66(a) registration is the date the registration issued. *Id.* at 15-16 (analogizing to cases involving Section 44(e) registrations); *accord Imperial Tobacco*, 14 USPQ2d at 1395-96.

Here, Petitioner has admitted that it has taken no actions to use the LITTERA LINE mark in commerce since the April 23, 2013 date of registration. Rule 36 of the Federal Rules of Civil Procedure provides: “A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.” Fed. R. Civ. P. 36(a)(3); *see also* TBMP 407.03(a). Thus, in the absence of an agreement to extend the response deadline, responses to requests for admission must be served within 30 days after the date of service of the requests. “If a party on which requests for admission have been served fails to timely respond thereto, the requests will stand admitted by operation of law.” TBMP 407.03(a) (citing *Fram Trak*, Cancellation No. 92043947 (requests for admissions deemed admitted by respondent’s failure to respond to petitioner’s requests for admissions); *Pinnocchio’s Pizza Inc. v. Sandia Inc.*, 11 USPQ2d 1227, 1228 n.5 (TTAB 1989)). It is not necessary to file a motion to deem requests for admissions admitted when no response is served, since the admissions are deemed admitted by operation of Rule 36(a). TBMP 407.03(a).

As described above, Registrant failed to timely respond to Petitioner's RFAs and has failed to file a motion to amend or withdraw those admissions. *See* TTAB Docket. Petitioner agreed to extend the deadline for Registrant to respond to the RFAs to November 12, 2014. More than three weeks have passed since that date, yet Registrant has not served any responses to the RFAs upon Petitioner. Accordingly, Registrant is deemed to have admitted all matters requested to be admitted and such admissions are "conclusively established." *See Fram Trak*, Cancellation No. 92043947, at 13; *see also* Fed. R. Civ. P. 36(b) ("A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended.").

Through its admissions, Registrant has admitted that:

- It does not invest any monetary resources into marketing or advertising any goods or services offered in connection with the term "LITTERA LINE" within the United States of America.
- It does not invest any monetary resources into promoting any goods or services offered in connection with the term "LITTERA LINE" within the United States of America.
- It has not sold or transported any goods in connection with the term "LITTERA LINE" mark in the United States of America.
- It has not performed or delivered any services in connection with the term "LITTERA LINE" mark in the United States of America.
- As of April 23, 2013, Registrant did not possess a bona fide intent to use the term "LITTERA LINE" as a trademark for the goods and services identified in USPTO Registration No. 4322704.
- At no time since April 23, 2013, has Registrant possessed a bona fide intent to use the term "LITTERA LINE" as a trademark for the goods and services identified in USPTO Registration No. 4322704.
- Registrant has abandoned USPTO Registration No. 4322704.

- As of April 23, 2013, Registrant possessed no documents with respect to the use of the term “LITTERA LINE” in the United States of America in connection with any goods or services.
- From April 23, 2013 to the present, Registrant possessed no documents with respect to the use of the term “LITTERA LINE” in the United States of America in connection with any goods or services.

The conclusive effect of Rule 36(b) “applies equally to those admissions made affirmatively and those established by default, even if the matters admitted relate to material facts that defeat a party’s claim.” *American Auto. Ass’n v. AAA Legal Clinic of Jefferson*, 930 F.2d 1117, 1120, 19 USPQ2d 1142 (5th Cir. 1991); *accord Fram Trak*, Cancellation No. 92043947, at 13 (issue of priority in motion for summary judgment held to be conclusively established by party’s admissions as a result of failure to respond to requests for admissions; granting petition to cancel and cancelling mark at issue).

In light of Registrant’s admissions that it has not sold, transported for sale, or delivered any goods or services under the LITTERA LINE mark in commerce in the United States, that it has abandoned the LITTERA LINE mark and that, since the issuance of the Registration, it has not possessed any bona fide intent to use the term “LITTERA LINE” as a trademark for the goods and services identified in the Registration, there is no genuine issue of material fact to be determined at trial. The undisputed facts establish that the Registrant has abandoned its mark without the intent to resume use of its mark and Petitioner is entitled to summary judgment as a matter of law.

#### **IV. CONCLUSION**

For the foregoing reasons, there is no material factual dispute that precludes the Board from entering summary judgment in favor of Petitioner and cancelling the Registration. Petitioner, therefore, respectfully requests that its motion for summary judgment be granted, that

Registration No. 4322704 be cancelled, and for such other relief as the Board may deem just and proper.

Dated: December 5, 2014.

**BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, LLP**

/RebeccaLCage/\_\_\_\_\_

David Sar

N.C. State Bar No.: 23533

Email: [dsar@brookspierce.com](mailto:dsar@brookspierce.com)

Rebecca Cage

N.C. State Bar No.: 41144

Email: [rcage@brookspierce.com](mailto:rcage@brookspierce.com)

2000 Renaissance Plaza

230 N. Elm Street

P.O. Box 26000 (27420)

Greensboro, North Carolina 27401

(T) 336-373-8850

(F) 336-232-9075

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT has been served on the Registrant by e-mailing said copy to counsel for Registrant on the date indicated below, in accordance with the parties' agreement, as follows:

Alexander S. Lazouski  
Lazouski IP LLC  
14726 Bowfin Ter., Suite 1  
Lakewood Ranch, FL 34202  
Email: [al@lzlawoffice.com](mailto:al@lzlawoffice.com)

This the 5th day of December, 2014.

**BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, LLP**

/RebeccaLCage/  
David Sar  
N.C. State Bar No.: 23533  
Email: [dsar@brookspierce.com](mailto:dsar@brookspierce.com)  
Rebecca Cage  
N.C. State Bar No.: 41144  
Email: [rcage@brookspierce.com](mailto:rcage@brookspierce.com)  
2000 Renaissance Plaza  
230 N. Elm Street  
P.O. Box 26000 (27420)  
Greensboro, North Carolina 27401  
(T) 336-373-8850  
(F) 336-232-9075

# EXHIBIT 1

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

In the matter of Trademark Registration No. 4322704

LITERA CORPORATION,	)	
	)	Cancellation No. 92059416
Petitioner,	)	
	)	Registration No. 4322704
v.	)	
	)	Issued: April 23, 2013
XELES WORLDWIDE CORP.,	)	
	)	Mark: LITTERA LINE
Registrant.	)	

**AFFIDAVIT OF REBECCA L. CAGE**

Rebecca L. Cage, being first duly sworn, deposes and says that:

1. I am over the age of 18 and am competent to testify to the matters set forth herein, of which I have personal knowledge. I am an attorney at the law firm of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P. (“Brooks Pierce”), which represents Petitioner Litera Corporation (“Petitioner”) in this cancellation proceeding.
2. I have personal knowledge of the facts stated in this Affidavit.
3. I am executing this Affidavit in support of Petitioner’s Motion for Summary Judgment and Memorandum of Law in Support.
4. Petitioner, through counsel, served its Initial Disclosures on Registrant Xeles Worldwide Corp. (“Registrant”) on September 26, 2014.
5. On October 6, 2014, Petitioner, through counsel, served Petitioner’s First Set of Requests for Admissions to Registrant (the “RFAs”) by e-mailing a copy of the RFAs to Registrant’s counsel in accordance with the parties’ agreement to accept service via email in this proceeding. A copy of the RFAs is attached hereto as Exhibit A.

6. On November 3, 2014, I received a copy of an email from counsel for Registrant acknowledging that November 5, 2014 was the deadline for responding to the RFAs and requesting an extension of time to respond to the RFAs.

7. On November 3, 2014, I received a copy of an email from David Sar, my colleague, responding to Registrant's request in which Petitioner agreed to extend the deadline for Registrant's responses to the RFAs to November 12, 2014. A copy of the email correspondence I received on Nov. 3, 2014 between Registrant's counsel and David Sar, is attached hereto as Exhibit B.

8. As of the date of this Affidavit, Registrant has not served responses, or otherwise responded, to the RFAs.

FURTHER AFFIANT SAYETH NOT.

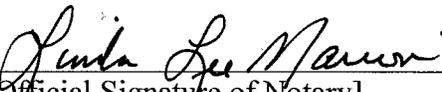
This the 5th day of December, 2014.

  
\_\_\_\_\_  
Rebecca L. Cage

Guilford County, North Carolina

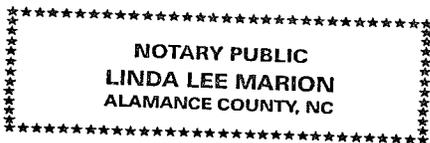
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Rebecca L. Cage

Date: 12.5.2014

  
\_\_\_\_\_  
[Official Signature of Notary]

[Official Seal]

LINDA LEE MARION, Notary Public  
[Notary's printed or typed name]



My Commission Expires: 10-14-2017

# EXHIBIT A

To Cage Affidavit

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

In the matter of Trademark Registration No. 4322704

LITERA CORPORATION,	)	
	)	
Petitioner,	)	
	)	Cancellation No. 92059416
v.	)	
	)	Registration No. 4322704
XELES WORLDWIDE CORP.,	)	
	)	Issued: April 23, 2013
Registrant.	)	

**PETITIONER'S FIRST SET OF REQUESTS FOR  
ADMISSIONS TO REGISTRANT**

COMES NOW the Petitioner, Litéra Corporation (hereinafter referred to as "Litéra" or "Petitioner"), by and through the undersigned counsel, and pursuant to TBMP § 407, Rules 26 and 36 of the Federal Rules of Civil Procedure, and 37 C.F.R. § 2.120, and requests that Applicant Xeles Worldwide Corporation (hereinafter referred to as "Xeles" or "applicant") respond to the requests for admissions set forth herein separately and fully, in writing, and within thirty (30) days of service of the same. In so doing, Xeles shall admit or deny, for the purposes of this action only, the truth of the matters set forth in these requests that relate to statements of opinion or fact, or relate to the application of law to fact.

**DEFINITIONS**

1. The terms "you," "your" and "Registrant" refer to Applicant Xeles Worldwide Corporation and includes any persons controlled by or acting on behalf of that entity, which includes but is not limited to all officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint ventures.

2. The term “Litéra” or “Petitioner” refers to Petitioner Litéra Corporation and includes any persons controlled by or acting on behalf of that entity, which includes but is not limited to all officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint ventures.
3. The term “person” means any natural person, any business, legal entity, governmental entity or agency, or any association.
4. The term “document” is synonymous in meaning and scope to the usage of the same term in Rule 34 of the Federal Rules of Civil Procedure. Specifically, the term “document” shall include, but is not limited to, any written, printed, typed, computerized, programmed or graphic matter of any kind or nature, however produced or reproduced, and all mechanical and electronic sound recordings or transcripts thereof, however produced or reproduced, and all mechanical and electronic sound recordings or transcripts thereof, however produced or reproduced, including, but not limited to memoranda, correspondence, reports, notes of telephonic conversations, studies, analyses, bulletins, instructions, inter and intra office communications, charts, graphs, photographs, and all forms and means of data compilations and recordings.
5. The term “identify” when referring to:
  - a. A natural person, means to give his or her full name, present or last known address and telephone numbers, last known place of employment, and the last known job title;
  - b. A public or private corporation, partnership or association, agency of other entity, means to give its present or last known address and telephone number, and state of incorporation, if applicable;
  - c. A document, means to state its general character, title, date, addressee or recipient, author or signatory, present location, and who has possession, custody and control of the document, provided, however, that’s answers/responses to interrogatories requesting identifications or descriptions of certain communications or documents may be satisfied by attaching a true and correct copy of any written documents, as described or referred to herein, containing the requested information;
  - d. A product, means to provide a description of the item which is offered for sale, and the intended market for the product; and
  - e. A service, means to describe the service and the intended market for the service.
6. The term “communication” is defined as any transmission or exchange of information between two (2) or more persons, orally or in writing, and includes but is not limited to, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic mail, skype message, text message, or other forms of media.

7. The terms “related to” and “relating to” mean, without limitation, concerning, containing, evidencing, describing, constituting, referring to, explaining, discussing or reflecting.
8. The term “LITTERA LINE” shall mean the mark associated with United States Patent and Trademark Office Registration Number 4322704, owned by Xeles Worldwide Corporation.
9. The term “LITTER BOX” shall mean the mark associated with United States Patent and Trademark Office Registration Number 4381819, owned by Xeles Worldwide Corporation.
10. The use of the present tense shall include past tenses.
11. The use of the singular form of any word also includes the plural and vice versa.
12. The terms “all” and “each” shall be construed to include the other.
13. The terms “and” and “or” shall be construed to include the other.

### INSTRUCTIONS

1. You are to respond to these requests for admissions, and in so doing, admit or deny the contents of each request for admission, separately and fully.
2. Each such request shall be deemed admitted unless Applicant served Opposer’s counsel with a written denial or objection thereto within the applicable time period allowed under federal law after the service of these Requests.
3. Each answer, if not admitted, shall specifically deny the matter or set forth in detail the reasons why you cannot truthfully admit or deny the matter.
4. If in good faith you must qualify your answer or deny only a part of the matter on which an admission is requested, you must specify so much of it as is true and qualify or deny the remainder.
5. You may not give lack of information or knowledge as a reason for failure to admit or deny, unless you state you have made reasonable inquiry and the information known or readily obtainable by you is insufficient to enable you to admit or deny.
6. You may not object to a request solely on the ground that you consider that the matter presents a genuine issue for trial.

7. All costs incurred in proving any matter denied shall be assessed against the Applicant as allowed by law.

### **REQUESTS FOR ADMISSIONS**

Consistent with the definitions and instructions set forth above, please respond to the following requests for admissions.

1. Admit that you do not invest any monetary resources into marketing or advertising any goods or services offered in connection with the term "LITTERA LINE" within the United States of America.

RESPONSE:

2. Admit that you do not invest any monetary resources into promoting any goods or services offered in connection with the term "LITTERA LINE" within the United States of America.

RESPONSE:

3. Admit that you have not sold or transported any goods in connection with the term "LITTERA LINE" mark in the United States of America.

RESPONSE:

4. Admit that you have not performed or delivered any services in connection with the term "LITTERA LINE" mark in the United States of America.

RESPONSE:

5. Admit that as of April 23, 2013, Registrant did not possess a bona fide intent to use the term "LITTERA LINE" as a trademark for the goods and services identified in USPTO Registration No. 4322704.

RESPONSE:

6. Admit that at no time since April 23, 2013, has Registrant possessed a bona fide intent to use the term "LITTERA LINE" as a trademark for the goods and services identified in USPTO Registration No. 4322704.

RESPONSE:

7. Admit that Registrant has abandoned USPTO Registration No. 4322704.

RESPONSE:

8. Admit that the English translation of the Latin term "LITTERA" is "letter."

RESPONSE:

9. Admit that the English translation of the Latin term "LITERA" is "letter."

RESPONSE:

10. Admit that the goods and services sold, transported, performed or delivered, or intended to be sold, transported, performed or delivered, by Registrant bearing the term "LITTERA LINE" will travel in similar channels of trade to Petitioner's goods and services distributed under its family of "LITERA \_\_\_\_\_" marks:

RESPONSE:

11. Admit that the goods and services sold, transported, performed or delivered, or intended to be sold, transported, performed or delivered, by Registrant bearing the term "LITTERA LINE" are advertised, sold or transported to similar classes of purchasers as Petitioner's goods and services distributed under its family of "LITERA \_\_\_\_\_" and "LITÉRA \_\_\_\_\_" marks.

RESPONSE:

12. Admit that as of April 23, 2013, Registrant possessed no documents with respect to the use of the term "LITTERA LINE" in the United States of America in connection with any goods or services.

RESPONSE:

13. Admit from April 23, 2013 to the present, Registrant possessed no documents with respect to the use of the term "LITTERA LINE" in the United States of America in connection with any goods or services.

RESPONSE

This the 6th day of October, 2014.

**BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, LLP**



---

David Sar

N.C. State Bar No.: 23533

Email: [dsar@brookspierce.com](mailto:dsar@brookspierce.com)

Rebecca Cage

N.C. State Bar No.: 41144

Email: [rcage@brookspierce.com](mailto:rcage@brookspierce.com)

2000 Renaissance Plaza

230 N. Elm Street

P.O. Box 26000 (27420)

Greensboro, North Carolina 27401

(T) 336-373-8850

(F) 336-232-9075

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSIONS TO REGISTRANT has been served on the Registrant by e-mailing said copy to counsel for Registrant on the date indicated below, in accordance with the parties' agreement, as follows:

Alexander S. Lazouski  
Lazouski IP LLC  
14726 Bowfin Ter., Suite 1  
Lakewood Ranch, FL 34202  
[al@lzlzlawoffice.com](mailto:al@lzlzlawoffice.com)

This the 6th day of October, 2014.



---

David W. Sar  
N.C. Bar No. 23533  
Rebecca L. Cage  
N.C. Bar No. 41144  
BROOKS, PIERCE, MCLENDON,  
HUMPHREY & LEONARD, L.L.P.  
P.O. Box 26000  
Greensboro, NC 27420-6000  
Phone: (336) 373-8850  
Fax: (336) 378-1001

*Attorneys for Petitioner*

# EXHIBIT B

To Cage Affidavit

## Rebecca L. Cage

---

**From:** David Sar  
**Sent:** Monday, November 03, 2014 4:24 PM  
**To:** Alex Lazouski; Rebecca L. Cage  
**Subject:** Petitions for Cancellation, Nos. 92059416 and 92059403 - Petitioner's discovery requests - response

Alex,

Redacted

We are willing to agree to a 7 day extension of time (i.e. responses due by Nov. 12, 2014) for them.

--David

**David W. Sar**  
[dsar@brookspierce.com](mailto:dsar@brookspierce.com)

**Brooks, Pierce, McLendon,  
Humphrey & Leonard, LLP**  
2000 Renaissance Plaza  
230 North Elm Street  
P.O. Box 26000 (27420)  
Greensboro, NC 27401

T 336-271-3175 (direct)  
T 336-373-8850 (general)  
F 336-232-9075 (direct fax)  
[www.brookspierce.com](http://www.brookspierce.com)

---

**From:** Alex Lazouski [<mailto:al@lzlawoffice.com>]  
**Sent:** Monday, November 03, 2014 10:00 AM  
**To:** Rebecca L. Cage  
**Cc:** David Sar  
**Subject:** URGENT: Petitions for Cancellation, Nos. 92059416 and 92059403 - Petitioner's discovery requests  
**Importance:** High

Redacted

Rebecca and David,

Redacted

# Redacted

In light of upcoming November 5 Discovery responses deadline, will your client consent to a 30-day extension of time?

We are looking forward to hear from you **as soon as possible**.

Best regards,

Alex

Alex Lazouski, Esq. \*



**Please note that we recently moved!**

14726 Bowfin Ter., Suite 1, Lakewood Ranch, FL 34202

Phone: +1 (201) 645-5616, Skype: lzlawoffice

Email: [al@lzlawoffice.com](mailto:al@lzlawoffice.com), Website: [www.lzlawoffice.com](http://www.lzlawoffice.com)

*\* Licensed to practice law in the state of New York. Not admitted in Florida.*

**CONFIDENTIAL AND PRIVILEGED INFORMATION IMPORTANT:** The enclosed message and any attachments are intended for the addressee only and are privileged and confidential. If you are not the addressee, then please **DO NOT** read, copy or distribute the message or any attachment. Please reply to the sender that you received the message in error and delete it. Thank you.

---