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Filing date: **07/15/2014**

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	WMS Gaming Inc.		
Entity	Corporation	Citizenship	Delaware
Address	800 South Northpoint Boulevard Waukegan, IL 60085 UNITED STATES		

Attorney information	Theodore H. Davis Jr. Kilpatrick Townsend & Stockton LLP 1100 Peachtree Street, Suite 2800 Atlanta, GA 30309 UNITED STATES svayner@ktslaw.com, tdavis@ktslaw.com, tadmin@ktslaw.com, kteilhaber@ktslaw.com		
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Registrations Subject to Cancellation

Registration No	4294144	Registration date	02/26/2013
International Registration No.	NONE	International Registration Date	NONE
Registrant	Aristocrat Technologies Australia Pty Ltd. Building A, Pinnacle Office Park North Ryde, NSW, 2113 AUSTRALIA		

Goods/Services Subject to Cancellation

Class 009. First Use: 0 First Use In Commerce: 0
All goods and services in the class are cancelled, namely: Electronic gaming machines, namely, devices which accept a wager

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	4411769	Registration date	10/01/2013
Registrant	Aristocrat Technologies Australia Pty Ltd. Building A Pinnacle Office Park North Ryde, NSW, 2113 AUSTRALIA		

Goods/Services Subject to Cancellation

Class 028. First Use: 2013/04/01 First Use In Commerce: 2013/05/21
All goods and services in the class are cancelled, namely: Electronic gaming machines, namely, devices which accept a wager

Grounds for Cancellation

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

U.S. Application No.	85626722	Application Date	05/16/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ZEUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2006/11/14 First Use In Commerce: 2006/11/14 Gambling machines, namely, devices which accept a wager; reconfigurable casino gaming equipment, namely, gambling machines and operational computer software therefor sold as a unit		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ZEUS		
Goods/Services	Gambling machines, namely, devices which accept a wager; reconfigurable casino gaming equipment, namely, gambling machines and operational computer software therefor sold as a unit		

Attachments	85626722#TMSN.png(bytes) WMS v. Aristocrat - Consolidated Petition for Cancellation (7-15-2014).pdf(24830 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	/Sabina A. Vayner/
Name	Sabina A. Vayner
Date	07/15/2014

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

WMS GAMING INC.,)	
)	Cancellation No. _____
Petitioner,)	
)	TM: THUNDER OF ZEUS
v.)	(Reg. No. 4294144)
)	
ARISTOCRAT TECHNOLOGIES)	TM: TEMPLE OF ZEUS
AUSTRALIA PTY LTD.,)	(Reg. No. 4411769)
)	
Respondent.)	
_____)	

CONSOLIDATED PETITION FOR CANCELLATION

Petitioner WMS Gaming Inc. (“WMS” or “Petitioner”) is being damaged by the continued maintenance on the Principal Register of Registration Nos. 4294144 and 4411769 (collectively, the “Registrations”), owned by Respondent Aristocrat Technologies Australia Pty Ltd. (“Aristocrat” or “Respondent”), and therefore states the following as its consolidated petition for the cancellation of those Registrations:

1. WMS is a Delaware corporation and a leading manufacturer and marketer of a wide variety of gambling devices and games, including gaming machines and related services.
2. WMS is the owner of the well-known ZEUS mark, both standing alone and in combination with other terms and/or design elements, which it has used continuously in United States commerce since at least as early as November 14, 2006 and which it continues to use in connection with gambling machines, namely, devices which accept a wager and reconfigurable casino gaming equipment, namely, gambling machines and operational computer software therefor sold as a unit (the “ZEUS Mark”). WMS has produced and sold in commerce numerous versions of ZEUS-branded gaming machines and, additionally, has licensed the use of the ZEUS mark in connection with online games of chance. WMS’ use of the ZEUS mark in commerce

commenced long prior to the actual and/or constructive dates of first use in commerce of the THUNDER OF ZEUS and TEMPLE OF ZEUS marks underlying the Registrations and long prior to the dates of issuance of the Registrations.

3. As a result of WMS' long and continuous use of its ZEUS Mark in connection with gambling machines and reconfigurable casino gaming equipment, and as a result of WMS' extensive advertising and promotion of gambling machines and reconfigurable casino gaming equipment products under its ZEUS Mark, the consuming public and the trade have come to recognize the ZEUS Mark as belonging to WMS, and associate and identify the goods sold under the ZEUS Mark with WMS. WMS consequently derives invaluable goodwill and value from this recognition, association, and identification by the consuming public and the trade.

4. Because of the high degree of inherent and acquired distinctiveness of the ZEUS Mark, the length of time and extent to which WMS has used the ZEUS Mark, the advertising and publicity the ZEUS Mark has received, the substantial trading area in which the ZEUS Mark is used, and the high degree of consumer recognition of the ZEUS Mark, the ZEUS Mark is a well-known and strong trademark, deserving of a broad scope of legal protection.

5. Respondent is the owner of Registration No. 4294144 of the THUNDER OF ZEUS mark for "electronic gaming machines, namely, devices which accept a wager" in Class 9 (the "THUNDER OF ZEUS Registration"). The THUNDER OF ZEUS Registration issued on February 26, 2013 and claims a priority date of January 10, 2011 on the basis of Section 44(e) of the Lanham Act, 15 U.S.C. § 1126(e).

6. The THUNDER OF ZEUS Registration is unrestricted as to industries, customers, channels of distribution, or advertising media.

7. Respondent is the owner of Registration No. 4411769 of the TEMPLE OF ZEUS mark for “electronic gaming machines, namely, devices which accept a wager” in Class 28 (the “TEMPLE OF ZEUS Registration”). The TEMPLE OF ZEUS Registration issued on October 1, 2013, claims a date of first use in commerce of May 21, 2013, and claims a priority date of March 26, 2012 on the basis of Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b).

8. The TEMPLE OF ZEUS Registration is unrestricted as to industries, customers, channels of distribution, or advertising media.

9. The goods recited in Respondent’s Registrations are identical to the goods that WMS currently provides in intrastate and interstate commerce in connection with its ZEUS Mark, and which it provided for years prior to any actual or constructive dates of first use in interstate commerce of Respondent’s THUNDER OF ZEUS and TEMPLE OF ZEUS marks.

10. Respondent’s THUNDER OF ZEUS mark is very similar in sight, sound, appearance, and commercial impression to WMS’ ZEUS Mark, in fact incorporating the entirety of WMS’ ZEUS Mark.

11. Respondent’s TEMPLE OF ZEUS mark is very similar in sight, sound, appearance, and commercial impression to WMS’ ZEUS Mark, in fact incorporating the entirety of WMS’ ZEUS Mark.

12. On information and belief, Respondent had actual knowledge of WMS’ ZEUS Mark prior to adopting its THUNDER OF ZEUS Mark.

13. On information and belief, Respondent had actual knowledge of WMS’ ZEUS Mark prior to filing the application that matured into the THUNDER OF ZEUS Registration.

14. On information and belief, Respondent had actual knowledge of WMS’ ZEUS Mark prior to adopting its TEMPLE OF ZEUS Mark.

15. On information and belief, Respondent had actual knowledge of WMS' ZEUS Mark prior to filing the application that matured into the TEMPLE OF ZEUS Registration.

16. WMS is suffering ongoing damage as a result of the continued existence of the Registrations on the Principal Register because WMS and Respondent are direct competitors in the gaming industry and because Respondent's TEMPLE OF ZEUS and THUNDER OF ZEUS marks so resemble WMS' ZEUS Mark as to be likely to cause confusion, mistake, and deception. Consequently, persons familiar with the ZEUS Mark and the goods sold under the ZEUS Mark are likely to believe erroneously that Respondent's goods are the goods of WMS or are authorized, endorsed, sponsored, or licensed by WMS.

17. Indeed, the USPTO recently issued an office action preliminarily refusing registration to WMS' pending application Serial No. 85626722 to register the ZEUS Mark for "gambling machines, namely, devices which accept a wager; reconfigurable casino gaming equipment, namely, gambling machines and operational computer software therefor sold as a unit" in Class 28 on the basis of a perceived likelihood of confusion between WMS' ZEUS Mark and the TEMPLE OF ZEUS and THUNDER OF ZEUS marks underlying the Registrations.

18. Continued registration of Respondent's THUNDER OF ZEUS and TEMPLE OF ZEUS marks on the Principal Register thus is inconsistent with WMS' strong prior rights in its ZEUS Mark under 15 U.S.C. §§ 1052(d) and 1064.

19. WMS therefore requests that the Board sustain this proceeding in WMS' favor by cancelling Registration Nos. 4294144 and 4411769.

20. The required \$600.00 fee is being submitted electronically with this Consolidated Petition for Cancellation. The Director is authorized to debit Kilpatrick Townsend & Stockton LLP's Trademark Deposit Account No. 20-1430 for any deficiency in the required fee.

This 15th day of July, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sabina A. Vayner", with a long horizontal flourish extending to the right.

Theodore H. Davis Jr.

Sabina A. Vayner

Kilpatrick Townsend & Stockton LLP

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Attorneys for Petitioner WMS Gaming Inc.

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

WMS GAMING INC.,)	
)	Cancellation No. _____
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ARISTOCRAT TECHNOLOGIES)	TM: TEMPLE OF ZEUS
AUSTRALIA PTY LTD.,)	(Reg. No. 4411769)
)	
Respondent.)	
_____)	

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 2.111 and TBMP § 309.02(c)(2), this is to certify that the attached **Consolidated Petition for Cancellation** is being served on Respondent and Respondent's attorney of record on July 15, 2014, via first-class mail addressed to:

Abiola Shobola, Esq.
Legal Department
Aristocrat Technologies, Inc.
7230 Amigo Street
Las Vegas, NV 89119

Aristocrat Technologies Australia Pty Ltd.
Pinnacle Office Park, Building A
85 Epping Road
North Ryde, NSW 2113
Australia



Sabina A. Vayner
Attorney for Petitioner

CERTIFICATE OF TRANSMITTAL

This is to certify that the attached **Consolidated Petition for Cancellation** is being filed electronically with the TTAB via ESTTA on July 15, 2014.



Sabina A. Vayner
Attorney for Petitioner