

ESTTA Tracking number: **ESTTA642591**

Filing date: **12/04/2014**

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	Alphaworks Capital Management, LLC		
Entity	limited liability company	Citizenship	Delaware
Address	155 North Wacker Drive Suite 4570 Chicago, IL 60606 UNITED STATES		

Attorney information	Thomas P. White Schiff Hardin LLP 233 South Wacker Drive Suite 6600 Chicago, IL 60606 UNITED STATES trademarks@schiffhardin.com, twhite@schiffhardin.com Phone:312-258-5500		
----------------------	--	--	--

Registration Subject to Cancellation

Registration No	3441211	Registration date	06/03/2008
Registrant	RESNICK, RONALD S. 1471 BLUERIDGE DRIVE BEVERLY HILLS, CA 90210 UNITED STATES		

Goods/Services Subject to Cancellation

Class 036. First Use: 2007/06/01 First Use In Commerce: 2007/06/01 All goods and services in the class are cancelled, namely: providing investment management services

Grounds for Cancellation

Abandonment	Trademark Act section 14
-------------	--------------------------

Attachments	petition to cancel.pdf(106267 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. White/
Name	Thomas P. White
Date	12/04/2014

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

ALPHAWORKS CAPITAL MANAGEMENT, LLC)	
)	
Petitioner,)	Cancellation No.: _____
)	
v.)	Registration No.: 3,441,211
)	Mark: ALPHAWORKS
ALPHAWORKS, LLC)	
)	
Registrant.)	

PETITION TO CANCEL

Petitioner Alphaworks Capital Management, LLC petitions to cancel U.S. Registration No. 3,441,211 for the mark ALPHAWORKS, registered to AlphaWorks, LLC, and states as follows:

1. Petitioner Alphaworks Capital Management, LLC is a Delaware limited liability company with an address of 155 North Wacker Drive, Suite 4570, Chicago, IL 60606.
2. United States Patent and Trademark Office records identify AlphaWorks, LLC, with an address of 415 East 37th Street, Suite 21-F, New York, NY 10016, as the original registrant and owner of record of Registration No. 3,441,211 for the mark ALPHAWORKS, in International class 36 in connection with “providing investment management services” (the “Registered Mark”).
3. USPTO records incorrectly identify Ronald S. Resnick, an individual with an address of 1471 Blueridge Drive, Beverly Hills, CA 90210 (“Resnick”), as the last listed owner of U.S. Registration No. 3,441,211.

4. On February 27, 2014, Petitioner filed an application for the mark ALPHAWORKS in connection with “financial services, namely, proprietary trading in commodities, securities, options, futures, equities and fixed income products in the United States and overseas market securities” in International class 36 (the “Application”). The Application was assigned Serial No. 86/205,645.

5. On June 5, 2014 the USPTO Examining Attorney issued an office action refusing Petitioner’s Application under Trademark Act Section 2(d), 15 U.S.C. §1052(d), on the grounds of a likelihood of confusion with the Registered Mark.

6. Petitioner is being and will be damaged by the continued registration of the Registered Mark within the meaning of 15 U.S.C. §1064, and therefore petitions to cancel Registration No. 3,441,211 on the grounds asserted below.

Failure to File Section 8 Declaration

7. Registration No. 3,441,211 should be cancelled because its owner has not filed a timely declaration of use or excusable nonuse as required by Section 8(a) of the Trademark Act, 15 U.S.C. §1058(a).

8. The Certificate of Registration for the Registered Mark was issued to AlphaWorks, LLC, a Delaware limited liability company on June 3, 2008.

9. On January 18, 2011, the USPTO received an assignment cover sheet purporting to reflect the assignment of Registration No. 3,441,211 from the Registrant, AlphaWorks, LLC, to Resnick. The cover sheet, a copy of which is attached as Exhibit A, was signed by Resnick as an individual and was submitted without any supporting documentation. The USPTO recorded the cover sheet at Reel 004459, Frame 0035, with an attached note stating “ASSIGNMENT COVERSHEET SUBMITTED WITHOUT SUPPORTING DOCUMENTATION.”

10. In order to validly record a document affecting title to a trademark registration, one of the following must be submitted along with an appropriate cover sheet: (1) a copy of the original document; (2) a copy of an extract from the document evidencing the effect on title; or (3) a statement signed by both the party conveying the interest and the party receiving the interest explaining how the conveyance affects title.” 37 CFR §3.25.

11. Resnick’s submission was not in compliance with the requirements of 37 CFR §3.25, because he failed to submit any of the required supporting documentation.

12. Without the submission of the required supporting documentation, no change in title to Registration No. 3,441,211 has been validly recorded and the record owner of the Registration No. 3,441,211 remains AlphaWorks, LLC.

13. On May 28, 2014, Resnick filed a Declaration of Use and/or Excusable Nonuse of Mark in Commerce under Section 8 for Registration No. 3,441,211. The Declaration was signed by Resnick in his individual capacity.

14. A Section 8 declaration of use or excusable nonuse must be filed by the owner of the registration. 15 U.S.C. §1058(a); 37 CFR §§2.160(a), §2.161. Filing by the owner “is a minimum requirement that must be met before the expiration of the deadlines set forth in §8(a) of the Act, 15 U.S.C. §1058(a).” Trademark Manual of Examining Procedure (October 2014) §1604.07(a).

15. Registration No. 3,441,211 should be cancelled under Section 8 of the Trademark Act, 15 U.S.C. §1058(a), because the owner of the registration did not file a timely declaration of use or excusable nonuse as required by that Section.

Abandonment

16. Registration No. 3,441,211 should also be cancelled on the grounds of abandonment.

17. The Registrant is not using, and has abandoned, the Registered Mark in connection with providing investment management services.

18. According to the records of the Delaware Secretary of State, the Registrant was voluntarily dissolved effective as of December 30, 2010.

19. According to a July 2011 press report, the Registrant was launched in late 2007 but “did not survive the financial crisis.”

20. On information and belief, the Registrant discontinued use of the Registered Mark in connection with providing investment management services, with intent not to resume such use.

21. On information and belief, the Registrant has not used the Registered Mark in connection with providing investment management services for more than three consecutive years.

22. Upon information and belief, Resnick, although not the owner of record of the Registered Mark, has abandoned the Registered Mark in connection with providing investment management services, has discontinued use of the Registered Mark in connection with providing investment management services with intent not to resume such use, and has not used the Registered Mark in connection with providing investment management services for more than three consecutive years.

23. Therefore, Registration No. 3,441,211 should be cancelled under Section 14 of the Trademark Act, 15 U.S.C. § 1064, on the grounds of non-use and abandonment.

Exhibit A



01/21/2011



103616054

SET
Y
ad documents or the new address(es) below

To The Director of the U S Patent and Trademark Office

1. Name of conveying party(ies):
AlphaWorks LLC

Individual(s) Association
 General Partnership Limited Partnership
 Corporation- State: DELAWARE LLC
 Other _____

Citizenship (see guidelines) _____

Additional names of conveying parties attached? Yes No

2. Name and address of receiving party(ies)
 Additional names, addresses, or citizenship attached? Yes No

Name: Ronald S. Resnick

Internal Address: _____

Street Address: 1471 BLUE RIDGE DR

City: Beverly Hills

State: CA

Country: USA Zip: 90210

Association Citizenship: USA
 General Partnership Citizenship: _____
 Limited Partnership Citizenship: _____
 Corporation Citizenship: _____
 Other _____ Citizenship: _____

If assignee is not domiciled in the United States, a domestic representative designation is attached Yes No
 (Designations must be a separate document from assignment)

3. Nature of conveyance /Execution Date(s) :

Execution Date(s) JUNE 13 2008

Assignment Merger
 Security Agreement Change of Name
 Other _____

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No (s) 344

B. Trademark Registration No (s) 344 1211

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown)

5. Name & address of party to whom correspondence concerning document should be mailed:

Name Ronald S. Resnick

Internal Address: _____

Street Address: 1471 BLUE RIDGE DR

City Beverly Hills

State CA Zip 90210

Phone Number 310 275 3300

Fax Number: 310 275 7799

Email Address: RONRES@HOTMAIL.COM

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 2 6(b)(6) & 3.41) \$ 40.00

Authorized to be charged to deposit account
 Enclosed

8. Payment Information:

Deposit Account Number _____

Authorized User Name _____

9. Signature: Ronald S Resnick JANUARY 10, 2011
 Signature Date

Ronald S Resnick
 Name of Person Signing

Total number of pages including cover sheet, attachments, and document 1

ASSIGNMENT COVERSHEET

SUBMITTED WITHOUT

SUPPORTING DOCUMENTATION

CERTIFICATE OF SERVICE

I certify that on December 4, 2014, I caused the foregoing Petition to Cancel to be served on the following by first class mail, postage prepaid:

AlphaWorks, LLC
415 East 37th Street, Suite 21-F
New York, NY 10016

Stephen B. Rodner
Pryor Cashman LLP
7 Times Square
New York, New York 10036

Ronald S. Resnick
1471 Blueridge Drive
PO Box 69491
Beverly Hills, CA 90210

/Thomas P. White/
Thomas P. White