

ESTTA Tracking number: **ESTTA677849**

Filing date: **06/12/2015**

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

Proceeding	92061151
Party	Plaintiff JMM Lee Properties, LLC
Correspondence Address	MICHAEL J LEE JMM LEE PROPERTIES LLC 2870 ANTIGUA DR BURBANK, CA 91504 UNITED STATES mlee@jmmlee.com
Submission	Motion for Default Judgment
Filer's Name	Michael Lee
Filer's e-mail	mlee@jmmlee.com
Signature	/MJLee/
Date	06/12/2015
Attachments	MotionforDefaultMinolta.pdf(94404 bytes) LeeDeclartionMinolta.pdf(87492 bytes) Exhibit 1.pdf(173132 bytes)

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

In the Matter of Registration Nos: 1347335 and
1336381¹
Trademark: MINOLTA and design

JMM LEE PROPERTIES, LLC)	
Petitioner)	
)	
v.)	MOTION FOR DEFAULT JUDGMENT
)	
KONICA MINOLTA HOLDINGS, INC.)	Cancellation No. 92061151
Respondent)	
)	

UNIED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITIONER'S MOTION FOR DEFAULT JUDGMENT

JMM Lee Properties, LLC ("JMM Lee" or "Petitioner"), hereby moves, pursuant to Rule 55 of the Federal Rules of Civil Procedure, 37 C.F.R §2.114 (a), and TBMP § 312.01, for an order entering default judgment in favor of Petitioner and cancelling the registrations of the mark MINOLTA, Registration Nos: 1347335 and 1336381 ("the Registrations"), owned by Konica Minolta Holdings, Inc. ("Konica Minolta" or "Respondent")

¹ Registration Nos. 1218008, 1218009 and 1129748, were originally a part of JMM Lee's Partial Petition to Cancel, however, these registrations were subsequently cancelled under Section 8 on March 25, 2015.

STATEMENT OF FACTS

On March 17, 2015, JMM Lee filed a Partial Petition to Cancel in the Trademark Trial and Appeal Board ("TTAB" or "the Board") in connection with the Registrations referenced herein for the mark MINOLTA. On the same day, Petitioner duly served the Petition to Cancel on Respondent via First Class Mail. See Attached Exhibit 1 and Lee Decl., ¶ 3.

On April 30, 2015, counsel for Respondent emailed JMM Lee requesting consent for a 30-day extension of time for Konica Minolta to answer the Petition. JMM Lee consented to the extension and the date to answer was reset to June 3, 2015. See Lee Decl., ¶ 5.

Respondent did not file or serve an answer to JMM Lee's Petition to Cancel on or before June 3, 2015, as ordered by the TTAB. Further, Respondent has not requested Petitioner's consent for an additional extension, nor has an extension of time been ordered by the TTAB. See Lee Decl., ¶ 7.

ARGUMENT

An entry of default judgment is properly ordered when, "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend." F.R.C.P. 55 (a). Moreover, specific to a cancellation proceeding before the Board, "[i]f no answer is filed within the time set, the petition may be decided as in case of default." 37 C.F.R. §2.114 (a).

Respondent failed to answer JMM Lee's timely filed and duly served Petition to Cancel within the time period set by the TTAB. In fact, to date, Respondent has failed to serve an answer at all. Respondent has not requested an extension of time to file an answer, and the

Board has not otherwise granted or ordered an extension of time to answer. Accordingly, default judgment is appropriate.

CONCLUSION

For the foregoing reasons, based on undisputed facts, default judgment is proper. Petitioner respectfully requests that the Partial Petition to Cancel be granted and the two marks at issue be cancelled in connection with the goods outlined in the Petition.

Respectfully submitted,

Dated: June 12, 2015

By: _____
/Michael J. Lee/
JMM Lee Properties, LLC
2807 Antigua Dr.
Burbank, CA 91504
(206) 850-6596
Mlee@jmmlee.com

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2015 a copy of the foregoing Petitioner's Motion for Default Judgment and the Declaration of Michael Lee are being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the attorneys for Respondent as follows:

Philip Jones
Brinks Gilson & Lione
NBC Tower-Suite 3600
455 North Cityfront Plaza Drive
Chicago, IL 60611
(312) 321-4727

/Michael J. Lee/
JMM Lee Properties, LLC

2015, requesting the cancellation of the mark MINOLTA, Registration Nos: 1347335 and 1336381 ("the Registrations"), owned by KONICA MINOLTA HOLDINGS, INC.

4. On March 25, 2015, the Trademark Trial and Appeal Board issued a notification of Partial Petition for Cancellation stating that Respondent had until May 4, 2015 to file an answer to the Petition.

5. On April 30, 2015, counsel representing KONICA MINOLTA HOLDINGS, INC. contacted Petitioner requesting consent for a 30 (thirty) day extension of time to answer.

6. Petitioner consented to the extension, and, upon request by Respondent, the Board reset the time to answer to June 3, 2015.

7. At no time after the initial April 30, 2015 request for consent has Respondent contacted Petitioner to ask for additional time to answer. Moreover, Respondent has not moved the Board for an extension of time to answer, nor has the Board granted or ordered such an extension.

8. Accordingly, pursuant Rule 55 of the Federal Rules of Civil Procedure, 37 C.F.R §2.114 (a), and TBMP § 312.01, Petitioner respectfully requests that the motion be granted for default judgment in its favor by cancelling the Registrations in connection with the goods and services outlined in the Petition.

Respectfully submitted,

Dated: June 12, 2015

By: _____
/Michael J. Lee/
JMM Lee Properties, LLC
2807 Antigua Dr.
Burbank, CA 91504
(206) 850-6596
Mlee@jmmlee.com

Exhibit 1

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

In the Matter of Registration Nos: 1347335,
1336381, 1218009, 1218008 and 1129748
Trademark: MINOLTA and design

JMM LEE PROPERTIES, LLC)
Petitioner)
)
)
v.)
)
KONICA MINOLTA HOLDINGS, INC.)
and MINOLTA KABUSHIKI KAISHA)
(MINOLTA CO., LTD.))
Respondents)

UNIED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION TO CANCEL

Petitioner, JMM Lee Properties, LLC, a Limited Liability Company formed under the laws of the State of California, having an address at 2807 Antigua Drive, Burbank, CA 91504 ("Petitioner"), believes that it will be damaged by the continued registration of the trademarks MINOLTA and design in their current form, and petitions to cancel part of the following registrations for the goods listed herein under class 09 due to abandonment. The marks at issue are Registration Nos. 1347335, 1336381, 1218009, 1218008 and 1129748 (the "Registrations"), owned by KONICA MINOLTA HOLDINGS, INC., MINOLTA KABUSHIKI KAISHA

(MINOLTA CO., LTD.) and their predecessors in interest ("Respondents"). A TSDR database printout of the full Registrations at issue is attached hereto as Exhibit A.

To the best of Petitioner's knowledge the addresses of the current owners of the Registrations are 1-6-1, MARUNOUCHI, CHIYODA-KU, TOKYO 100-0005 JAPAN for KONICA MINOLTA HOLDINGS, INC., and OSAKA KOKUSAI BUILDING, 3-13, 2 CHOME, AZUCHI-MACHI, CHUO-KU, OSAKA-SHI, OSAKA 541-8556, JAPAN for MINOLTA KABUSHIKI KAISHA (MINOLTA CO., LTD.).

REQUEST TO CONSOLIDATE

As the five (5) Registrations at issue in this Petition are owned by the same entity,¹ Petitioner moves to consolidate this action into a single Petition to Cancel as allowed by 37 CFR § 2.112(b).

PARTIAL CANCELLATION

"[T]he Board has authority under Section 14 to cancel part of a registration when use of a mark has been abandoned for specific goods or services listed in the identification." *Johnson & Johnson and Roc International S.A.R.L. v. Obschestvo s Ogranitchennoy; Otvetstvennostiu WDS*, 104 USPQ2d 2037 (TTAB 2012). See also *DAK Industries Inc. v. Daiichi Kosho Co.*, 35 USPQ2d 1434 (TTAB 1995).

In this cancellation proceeding, Petitioner seeks to cancel the Registrations for the mark MINOLTA and design in connection with the following photographic goods under class 09 due to abandonment²:

¹ Based on TSDR records, MINOLTA KABUSHIKI KAISHA (MINOLTA CO., LTD.) is the predecessor in interest to KONICA MINOLTA HOLDINGS, INC. As such, the companies are a part of the same entity.

1. Registration No. 1347335 - MOTION PICTURE CAMERAS, VIDEO CAMERAS, ACCESSORIES FOR STILL CAMERAS-NAMELY, ANGLE FINDERS, FILTERS, GELATIN-FILTER HOLDERS, EYEPIECE CUPS, AUTOMATIC FILM WINDERS, PANORAMA HEADS, CAMERA CAPS, LENS CAPS, WIRELESS CONTROLLERS, INTERCHANGEABLE CAMERA-BACK FOR IMPRINTING DATA ONTO FILM AND UNMANNED OPERATION CONTROL, MAGNIFIERS, CABLE RELEASES, TRIPODS, FOCUSING RAILS, , MACRO STANDS, CLOSE-UP LENSES, EXTENSION TUBES, CAMERACASES AND BAGS, LENS CASES, CAMERA ACCESSORY CASES AND BAGS AND MOUNT ADAPTERS;ACCESSORIES FOR MOTION PICTURE CAMERAS-NAMELY, MICROPHONES, FM WIRELESS RECEIVERS, EARPHONES, FILTERS, EXTERNAL BATTERYUNITS, SHOULDER CASES, VIEWERS, FILM REELS, CLEANING BRUSHES AND DUST COVERS; ACCESSORIES FOR VTR-NAMELY, AC ADAPTORS/CHARGERS, BATTERY PACKS,CAMERAS SHOULDER BAGS, CAMERA CASES

2. Registration No. 1336381 - ACCESSORIES FOR STILL CAMERAS-NAMELY, AUTOMATIC FILM WINDERS, PANORAMAHEADS, CAMERA CAPS, LENS CAPS, WIRELESS CONTROLLERS, INTERCHANGEABLE CAMERA-BACK FOR IMPRINTING DATA ONTO FILM AND UNMANNED OPERATION CONTROL, TRIPODS, FOCUSING RAILS, STANDS, EXTENSION TUBES, AND CASES AND BAGS THEREFOR

3. Registration No. 1218009 - Photographic cameras, interchangeable camera lenses and electronic camera flashes.

4. Registration No. 1218008 - Photographic cameras, interchangeable camera lenses, and electronic camera flashes.

5. Registration No. 1129748 - STILL CAMERAS; CAMERA LENSES; ELECTRONIC MOTION PICTURE CAMERAS,SOUND MOTION PICTURE CAMERAS; STILL CAMERA ACCESSORIES-NAMELY, RANGE FINDERS, FILTERS, CAMERA GRIPS, FILM LOADERS, CORDS FOR CONNECTING FLASHLAMPS TO CAMERAS, CAMERA STRAPS, FOCUSING SCREENS, HOT SHOES, LENS SHADES, PANORAMA HEADS, ANGLEFINDERS, MAGNIFIERS, EYEPIECE HOODS, LENS CAPS, EYEPIECE CORRECTION LENSES, EXTENSION TUBES FOR LENSES, RINGS FOR

² Some of the MINOLTA registrations Petitioner seeks to partially cancel include multiple classifications. This Petition only covers the photographic goods listed herein under class 09.

USING LENSES IN REVERSE POSITIONS,CAMERA CASES AND BAGS, LENS CASES, CAMERA ACCESSORY CASES AND BAGS; MOTION PICTURE AND SOUND MOTION PICTURE CAMERA ACCESSORIES-NAMELY, LENS CAPS, MICROPHONES, FM WIRELESS TRANSMITTER,FM RECEIVERS, TELESCOPING ATENNAE CORDSFOR CONNECTING MICROPHONES AND REMOTE CONTROL SWITCHES TO CAMERAS, CAMERA CASES, LENS SHADES,CAMERA GRIPS, CAMERA STRAPS, ELECTRONIC FLASHES TO CAMERAS, BATTERY CARTRIDGES, CORDS FOR CONNECTING FLASH EQUIPMENT TO CAMERAS, SEPARATE PHOTOSENSORS FOR DETERMINING FLASH REQUIREMENTS, CASES FOR RECHARGEABLE BATTERIES, CASES FOR FLASHGUNS AND ELECTRONIC

As grounds for the cancellation, Petitioner alleges that:

1. On Jan. 27, 2015, Petitioner filed Application Ser. No. 86515392 ("Petitioner's Application") for the mark MINOLTA in connection with photographic goods, namely, cameras, digital cameras, digital camcorders; portable handheld electronic devices for recording, storage, transmission or reproduction of photographic, video and multimedia content. A printout of this application from the TSDR database is attached as Exhibit B.
2. The subject five (5) Registrations owned by Respondent have been cited by a the USPTO as a bar to Petitioner's registration of the mark MINOLTA.

ABANDONMENT

3. Petitioner incorporates the allegations in all of the preceding paragraphs by reference as if fully set forth herein.
4. Petitioner has conducted an extensive investigation by searching online stores and other sources, and through various news and media outlets, but has been unable to find the photographic goods listed herein in connection with the mark MINOLTA offered for sale in the United States by Respondents.
5. In a press release dated January 19, 2006, Konica Minolta announced that it was

withdrawing from the camera and photo business stating, "we have decided to withdraw from camera business, such as film cameras and digital cameras, within Konica Minolta Group, as of March 31, 2006." The release goes on to state that Konica Minolta, "will step-by-step reorganize our sales offices and withdraw from all of our photo sales activities by September 30, 2007." (see Exhibit C)

6. As recently as February of 2015, Konica Minolta's U.S. home page included a link under the heading, "Termination of Camera, Photographic and Processing Products & Services," (See Exhibit D) and stated that, "Konica Minolta has ceased all camera and photographic business. We apologize for any inconvenience and suggest referring to our Camera & Photo Support page for more information." The Camera & Photo Support page provides further details about Konica Minolta's exit from the photo business, including, "Konica Minolta Photo Imaging Inc. ceased its Camera Business Operations as of 31 March 2006, and ceased the entire customer services for Konica Minolta cameras and related products as of 31 December 2010." (See Exhibit E).

7. The goods covered by Konica Minolta's photo business, from which Respondent has withdrawn, are the same goods cited by the USPTO as a bar to Petitioner's registration of the mark MINOLTA.

8. The goods covered by Konica Minolta's photo business, from which Respondent has withdrawn, are highly similar to the goods listed in Petitioner's MINOLTA Application for photographic goods.

9. Upon information and belief, based on the foregoing, Respondent does not have a basis for claiming rights in the MINOLTA mark in connection with the photographic goods listed in this Petition and in Respondent's subject Registrations under class 09, because

Respondent has not used the mark in the United States in conjunction with these photographic goods since at least December of 2010, and thus has abandoned the MINOLTA mark in connection with these goods.

10. Upon information and belief, based on the foregoing, Respondent is not currently using the mark MINOLTA in the United States for the photographic goods in class 09 identified in this Petition and listed in Respondent's subject Registrations.

11. Upon information and belief, based on the foregoing, Respondent has no intent to resume use of the MINOLTA mark in connection with the photographic goods listed in this Petition and in the subject Registrations, and therefore, the mark has been abandoned.

12. Abandonment of a mark occurs when its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for three (3) consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark. Trademark Act Section 45, 15 U.S.C. § 1127.

13. Petitioner will be damaged by the continued registration of Registration Nos. 1347335, 1336381; 1218009, 1218008 and 1129748 in connection with the goods listed in this Petition as, for among other reasons, they are currently blocking Petitioner's own Application to register the MINOLTA mark.

14. Cancellation is appropriate due to abandonment, under Section 14 of the Lanham Act, 15 U.S.C. §1064.

WHEREFORE, Petitioner respectfully requests that this Petition be sustained, and due to abandonment, the subject Registrations for the mark MINOLTA and design be cancelled in connection with the goods listed herein under class 09.

Respectfully submitted,

Dated: March 17, 2015

By: _____

Michael J. Lee
JMM Lee Properties, LLC
2807 Antigua Dr.
Burbank, CA 91504
(206) 850-6596
Mlee@jmmlee.com

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2015 a copy of the foregoing Petition to Cancel is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the attorneys for Respondent as follows:

Philip Jones
Brinks Gilson & Lione
NBC Tower-Suite 3600
455 North Cityfront Plaza Drive
Chicago, IL 60611
(312) 321-4727

/Michael J. Lee/
JMM Lee Properties, LLC