

ESTTA Tracking number: **ESTTA674866**

Filing date: **05/28/2015**

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	Moftware, Inc.		
Entity	Corporation	Citizenship	Texas
Address	12610 W. Airport Blvd., Suite 120 Sugar Land, TX 77478 UNITED STATES		

Attorney information	Michael A. Leone, Esq. Seltzer Caplan McMahon Vitek 750 B Street, Suite 2100 San Diego, CA 92101 UNITED STATES usdocketing@scmv.com Phone:619-685-3071		
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Registration Subject to Cancellation

Registration No	4330247	Registration date	05/07/2013
Registrant	ANKER TECHNOLOGY CO., LIMITED ROOM 703 KOWLOON BUILDING KOWLOON, HONG KONG		

Goods/Services Subject to Cancellation

Class 009. First Use: 2010/03/01 First Use In Commerce: 2010/05/01 All goods and services in the class are cancelled, namely: Batteries and battery chargers; battery-cables; battery cases; battery charge devices; battery packs; renewable battery system to provide backup power

Grounds for Cancellation

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

U.S. Registration No.	3319301	Application Date	12/18/2006
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	AMZER		

Design Mark	<h1>Amzer</h1>
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2003/11/01 First Use In Commerce: 2003/11/01 Cellular telephones, mp3 players, battery chargers, headsets for telephones, charging appliances for rechargeable equipment, leather cases for telephones

Attachments	77066051#TMSN.png(bytes) Document.pdf(901340 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	/Michael A. Leone/
Name	Michael A. Leone, Esq.
Date	05/28/2015

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

Moftware, Inc.) Cancellation No. _____
)
) Petitioner,) In the matter of:
) Registration No. 4,330,247
vs.) Marks: **ANKER**
)
)
)
Anker Technology Co., Limited)
)
)
) Registrant.

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Moftware, Inc. (“Petitioner”), a Texas corporation, having an address of 12610 W. Airport Blvd., Suite 120, Sugar Land, Texas 77478, believes that it will be damaged by the continued registration of the mark **ANKER** in Registration No. 4,330,247, owned by Anker Technology Co., Limited (“Registrant”), a Hong Kong limited liability company, having an address of Room 703 Kowloon Building, 555 Nathan Road, Kowloon, Hong Kong, and hereby petitions to cancel said registration under the provisions of Section 14 of the Trademark Act of 1946, 15 U.S.C. § 1064. This Petition for Cancellation is filed in connection with the Petition for Cancellation filed by Moftware, Inc. against Anker Technology Co., Limited in the matter of Registration No. 4,086,553, for the mark **ANKER Stylized**.

The grounds for cancellation are as follows:

1. Registrant's registration for the trademark **ANKER**, used in commerce in connection with "batteries and battery chargers; battery cables; battery cases; battery charge devices; battery packs; renewable battery system to provide backup power" in Class 9, was filed on December 5, 2011, and registered on May 7, 2013.

2. Petitioner's filing of this Petition to Cancel is timely pursuant to 37 C.F.R. § 2.111.

3. Petitioner is the owner of Registration No. 3,319,301, filed December 18, 2006, registered October 23, 2007, for the trademark **AMZER**, used in commerce in connection with "cellular telephones, mp3 players, battery chargers, headsets for telephones, charging appliances for rechargeable equipment, leather cases for telephones" in Class 9 since at least as early as November 1, 2003.

4. Petitioner's date of first use of its mark in commerce was at least as early as November 1, 2003. This date of first use in commerce is 6 years and 6 months prior to the May 1, 2010 first use in commerce date of the registered mark **ANKER**. Petitioner has clear priority of use of the **AMZER** mark and has not abandoned it.

5. Petitioner has delivered its cellular related technology products under its **AMZER** trademark to consumers from numerous states, as well as consumers from foreign countries.

6. The **AMZER** trademark of Petitioner has developed extensive good will and consumer recognition built through Petitioner's substantial effort and expense in advertising and promotion. Registration of Registrant's trademark deprives Petitioner of the exclusive use of its **AMZER** trademark and infringes the **AMZER** trademark, violating Petitioner's rights therein, and exposes Petitioner to further violation of its trademarks by others, thereby diminishing the commercial value of the trademark to Petitioner in numerous ways. In addition, Registrant's **ANKER** registration is likely to be a source of damage and injury to Petitioner's customers, and further is likely to dilute and lessen or have diluted and lessened the capacity of Petitioner's mark to identify and distinguish Petitioner's services. Petitioner will be damaged by the continued existence of Registrant's **ANKER** registration, and the registration should therefore be cancelled.

7. The word "ANKER" in Registrant's **ANKER** registration is confusingly similar to Petitioner's mark and is likely to cause confusion, or to cause mistake or to deceive, in violation of Section 2(d) of the Lanham Act (15 U.S.C. § 1052(d)), when used on or in connection with Registrant's goods. The aforementioned **ANKER** registration must be cancelled under Lanham Act Section 2(d) on the grounds that Petitioner used its marks in the United States prior to Registrant's use in the United States. Lanham Act Section 2(d) expressly prohibits registration of a mark that "...consists of or comprises a mark which so resembles... a mark or trade name previously used in the United States by another and not abandoned, as to be likely... to cause confusion..." Consumers are even more likely to be confused because Registrant's mark and Petitioner's mark are for use in the same cellular technology industry, for similar cell phone and battery related goods, including battery chargers.

8. Registrant's **ANKER** registration is confusingly similar enough to Petitioner's **AMZER** registration to cause actual confusion in the marketplace. Petitioner has on several occasions received communications from customers who intended to contact Registrant. Petitioner has also on several occasions received Registrant's products in the mail mistakenly returned from customers and/or retailers, and Petitioner has received communications on several occasions from its dealers asking for Registrant's products.

9. By reason of the foregoing, Petitioner has standing to file this petition because there is a likelihood of damage to Petitioner by the continued existence of Registrant's Registration No. 4,330,247, and the registration should be cancelled.

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained in favor of Petitioner, and that Registration No. 4,330,247 should be cancelled.

Dated: May 28, 2015



Michael A. Leone, Esq.

Attorney for Petitioner
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San Diego, California 92101
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PETITION FOR CANCELLATION** was served by Federal Express, postage prepaid, on this 28th day of May, 2015, upon Applicant's Correspondent at the following address of record:

YANG MENG
CONVENTION PLAZA
3011, 30/F, OFFICE TOWER
1 HARBOUR ROAD
HONG KONG



Jenna M. Jay
Paralegal
Seltzer Caplan McMahon Vitek