

ESTTA Tracking number: **ESTTA712969**

Filing date: **12/07/2015**

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	Space Scooter Ltd.		
Entity	Limited Company	Citizenship	Canada
Address	585 Middlefield Road Unit 22 Scarborough, Ontario, M1V 4Y5 CANADA		

Attorney information	Elizabeth Oliner Oliner Law 345 Grove Street 2nd Floor San Francisco, CA 94102 UNITED STATES liz@olinerlaw.com, shawn@olinerlaw.com Phone:650-549-5298
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Registration Subject to Cancellation

Registration No	4741450	Registration date	05/26/2015
International Registration No.	NONE	International Registration Date	NONE
Registrant	Easy2.Company Besloten Vennootschap Newtonstraat 46 NETHERLANDS		

Goods/Services Subject to Cancellation

Class 012. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Vehicles, namely, scooters
Class 028. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Games and playthings, namely, toy scooters

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Related Proceedings	Opposition No. 91224876
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86303265	Application Date	06/07/2014
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	SPACE SCOOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 012. First use: First Use: 2008/08/02 First Use In Commerce: 2012/04/20 Non-motorized Scooters; Structural parts and accessories for non-motorized scooters; Non-motorized scooters for use in sports and recreation Class 028. First use: First Use: 2008/08/02 First Use In Commerce: 2012/04/20 Toy scooters and accessories therefor; Rideable toys and accessories therefor; Ride-on toys and accessories therefor; Toy vehicles and accessories therefor		

Attachments	86303265#TMSN.png(bytes) SPACE SCOOTER tm cancellation (1) (2).pdf(111210 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	/elizabetholiner/
Name	Elizabeth Oliner
Date	12/07/2015

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

SPACE SCOOTER,
A Limited Company (Ltd.)

PETITIONER,

And

Easy2. Company Besloten Vennootschapane
Crawford,

RESPONDENT.

In the matter of Serial Nos.
79150812, 79156928 (U.S. Registration
No. 4741450)

For the mark SPACE SCOOTER

Filing Date: April 15, 2014 and August
27, 2014 respectively

Publication Date: October 14, 2015 and
March 10, 2015 respectively

Registration Date: May 26, 2015

Cancellation No. _____

NOTICE OF OPPOSITION AND PETITION TO CANCEL REGISTERED MARK

Petitioner, Space Scooter Ltd., a Canadian limited company (hereinafter "Petitioner"), believes that it will be greatly damaged by the registration of the mark SPACE SCOOTER (hereinafter "Mark") for U.S. Serial No. 79150812 (hereinafter "Application"), filed by Easy2. Company Besloten Vennootschap (hereinafter "Easy2") on April 15, 2014. The Petitioner also believes that it will be vastly damaged by continued registration of U.S. Registration No. 4741450, for the mark SPACE SCOOTER, which is also owned by Easy2.

The Petitioner's grounds for opposition and cancellation of the above identified Marks are as follows:

INTRODUCTION

1. Easy2 filed a trademark application with the USPTO assigned U.S. Serial No. 79150812 on April 15, 2014 for the mark SPACE SCOOTER, under International Class 012, “Vehicles, namely, scooters”, and International Class 028, “Games and playthings, namely, toy scooters.”
2. Easy2 filed its application under Section 66(a), based on its International Registration of the mark which was issued on April 15, 2014.
3. Easy2 also filed a trademark application with the USPTO assigned U.S. Serial No. 79156928 on August 27, 2014 for the stylized mark SPACE SCOOTER, under International Class 012, “Vehicles, namely, scooters”, and International Class 028, “Games and playthings, namely, toy scooters.”
4. Easy2 filed its application under Section 66(a), based on its International Registration No. 1227572 of the mark, SPACE SCOOTER, which was issued on August 27, 2014.
5. The USPTO issued Easy2 a registration certificate for its stylized SPACE SCOOTER mark on May 26, 2015 and assigned it U.S. Trademark Registration No. 4741450.
6. The Petitioner filed its trademark application with the USPTO assigned U.S. Serial No. 86303265 on June 7, 2014 for the mark SPACE SCOOTER under International Class 012, “Non-motorized Scooters; Structural parts and accessories for non-motorized scooters; Non-mortorziied scooters for use in sports and recreation”, and International Class 028, “Toy scooters and accessories therefor; Rideable toys and accessories therefor; Ride-on toys and accessories therefor; Toy vehicles and accessories therefor.”
7. The Petitioner filed under 1(a) filing basis, with its first use of the mark ever on August 2, 2008 and its first use of the mark in commerce on April 20, 2012.

PRIOR USE

1. The Petitioner asks the Trademark Trial and Appeals Board to prevent registration of U.S. Serial No. 79150812 and to cancel U.S. Registration No. 4741450 based on the Petitioner’s priority of use under 15 U.S. Code § 1052 (d).

2. Petitioner and Easy2 have been using identical marks for goods that are similar and related to one another. Petitioner sells non-motorized scooters as well as accessories for these scooters. Easy2 sells only the scooters.
3. Both Petitioner and Easy2 have filed trademark applications for international classes 012 and 028. Easy2 has been issued registration for its stylized mark on May 26, 2015.
4. The Petitioner and Easy2's goods and services are very closely related to one another and would likely cause confusion amongst consumers.
5. The Petitioner sells its scooters to its customers in the U.S. and Canada through its online website. Easy2 sells to its European consumers via its online website as well. Giving Easy2 trademark registration for SPACE SCOOTERS in the U.S., will cause the North American market to fall into great confusion. Consumers will wrongly assume that Easy2's products are affiliated with those of the Petitioner's, who already has an established market share in this industry.
6. The Petitioner did not try to obtain a trademark registration for its Mark until it filed its application in 2014, however, it has common law rights in the Mark dating back to April 20, 2012 when the Mark was first used in commerce.
7. Petitioner submits shipping labels dated December 5, 2012, November 25, 2013, November 28, 2014 and January 5, 2015 as evidence that the Petitioner has been using the Mark prior to Easy2's first use in commerce, Easy2's International Registration, and its application for registration.
8. Petitioner's Mark is widely recognized throughout the U.S and Canada as a reputable brand for scooters. In fact, Petitioner's website gets over one hundred (100) new visitors per day. It also has a widely popular YouTube marketing campaign which has had over 133,458 views. *See* <https://www.youtube.com/watch?v=f-dDD-kVEGY>
9. Based on the fact that the Petitioner's Mark has a wide presence in the North American market and is a reputable brand, it seems highly unlikely that the Easy2 was not aware of the

Petitioner's prior use of the mark before it filed its applications in April and August 27 of 2014, respectively.

CONCLUSION

10. The Petitioner has shown through evidence submitted that it was using the Mark in commerce prior to the Easy2's first use in commerce and International Registration date of April 15, 2014 for U.S. Serial No. 79150812 and August 27, 2014 for U.S. Registration No. 4741450.
11. The Petitioner's first use of the Mark in commerce dates back to April 20, 2012; which is two (2) years before Easy2's first use in commerce (based on its International Registration dates from April and August, 2014).
12. The Petitioner's Mark is widely recognized as a brand of high quality scooters throughout North America. Easy2 has been selling its scooters mainly in Europe and now wants to expand to the U.S. where the Petitioner already has an established presence.
13. Allowing registration of Easy2's Mark for Serial No. 79150812 and continued registration of Registration No. 4741450 will cause great harm to the Petitioner's reputation who maintains a certain quality for the goods it carries and sells under its Mark. If people associate Easy2's scooters with those sold by the Petitioner, it could cause irreparable damage to the Petitioner's brand, which is known for selling high quality goods.
14. Therefore, the Petitioner hereby requests the Trademark Trial and Appeals Board to deny Easy2's application for registration of the Mark for U.S. Serial No. 79150812 and cancel Easy2's registration for U.S. Registration No. 4741450, based on overwhelming evidence that the Petitioner has priority rights in the Mark.

By: /ejo/

Date: December 7, 2015

Elizabeth Oliner
Attorney at Law for Petitioner
345 Grove Street, 2nd Floor
San Francisco, CA 94102

CERTIFICATE OF SERVICE/MAILING

I hereby certify that a true and complete copy of the foregoing Petition for Cancellation has been served on Registrant's attorney of record by sending said copy by airmail on December 8, 2015 to:

St. Center Tone Consultancy
International Trademark Protection
Postbus 12063
NL-3004 GB Rotterdam
Netherlands

and

Easy2. Company Besloten Vennootschap
Newtonstraat 46
NL-1704 SB Heerhugowaard
Netherlands

/ejo/
Elizabeth Oliner