

ESTTA Tracking number: **ESTTA714733**

Filing date: **12/15/2015**

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	TRAXXAS LP		
Entity	Partnership	Citizenship	Texas
Composed Of:	a Texas limited partnership, having as its General Partner, Traxxas Management LLC, a Texas limited liability company		
Address	6250 Traxxas Way McKinney, TX 75070 UNITED STATES		

Correspondence information	Gregory W. Carr, Esq. CARR Law Firm PLLC 6170 Research Road, Suite 111 Frisco, TX 75033 UNITED STATES trademarks@carrip.com Phone:214.760.300
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Registration Subject to Cancellation

Registration No	4860604	Registration date	11/24/2015
Registrant	LightUpToys.com LLC 8512 Commerce Park Drive Sellersburg, IN 47172 UNITED STATES		

Goods/Services Subject to Cancellation

<p>Class 028. First Use: 2014/01/14 First Use In Commerce: 2014/01/14 All goods and services in the class are cancelled, namely: Toys, namely, toy game balls, balls for sports, hand balls, play balls, sport balls, hand-held toy figures, dolls, dollplaysets, action figure toys, bath toys, bathtub toys, battery-operated action toys, bendable toys, collectable toy figures, construction toys, crib toys, cat toys, dog toys, drawing toys, electric action toys, electronic learning toys, electric toy vehicles, electronically operated toy motor vehicles, fantasy character toys, toy flying saucers, infant toys, mechanical toys, model toy vehicles, modeled plastic toy figurines, molded toyfigures, music box toys, musical toys, non-electronic toy vehicles, party favors in the nature of small toys, pet toys, plastic character toys, play mats for use with toy vehicles, plush toys, pop-up toys, printing toys, positionable toy figures, pull toys, punching toys, push toys, radio-controlled toy vehicles, ride-able toy vehicles, role playing toys in the nature of play sets for children to imitate real life occupations, rubber character toys, sand toys, sandbox toys, scale model kits, sketching toys, soft sculpture toys, squeeze toys, stacking toys, stuffed and plush toys, stuffed toys, talking toys, tossing disc toys, toy airplanes, toy and novelty face masks, toy animals, toy armor, toy artificial fingernails, toy bake-ware and cookware, toy balloons, toy banks, toy boats, toy bows and arrows, toy building blocks, toy butterfly nets, toy candy dispensers, toy cars, toy clocks and watches, toy construction blocks, toy construction sets, toy figures, toy film cartridges and viewers, toy fireworks, toy furniture, toy gliders, toy houses, toy masks, toy microscopes, toy mobiles, toy model train sets, toy model hobby-craft kits, toy modeling dough, toy music boxes, toy pistols, toy putty, toy record players, toy robots, toy rockets, toy scooters, toy snow globes, toy swords, toy telescopes, toy tools, toy vehicles, toy watches, toy</p>
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water globes, toy weapons, toy whistles, bean bag animals, transforming robotic toys, water squirting toys, water toys, wind-up toys, disc toss toys, children's multiple activity toys, articles of clothing for toys, baby multiple activity toys, cases for toy vehicles, cases for toy dolls, toy dolls, kites; games, namely, board games, card games, hand-held units for playing video games other than those adapted for use with an external display screen or monitor, puzzle games, hand-held units for playing electronic games other than those adapted for use with an external display screen or monitor; apparatus for electronic games other than those adapted for use with an external display screen or monitor; electronic building blocks that light up; electronic toy vehicles; plush animals that play music, toy guitars, toy musical instruments, toy pianos, toy drums; girls' toys, namely, dolls, figurines, plush toys, plastic character toys, children's dress-up accessories, role play toys in the nature of play sets for children to imitate real life occupations; boy's toys, namely, action figures; action toys, namely, electronic action toys; figurines, namely, molded plastic toy figurines; character toys, namely, plastic character toys and plush character toys; toy with book, namely, children's multiple activity toys sold as a unit with printed book; children's games, namely, board games, card games, puzzle games, and apparatus for electronic games other than those adapted for use with an external display screen or monitor; toy electronics, namely, electronic educational game machines for children and electronic non-educational game machines for children; Squeezable electronic toy animals made of plastic that light up and make noises; Bubble making gun and solution sets; Bubble making wand and solution sets; Bubble toys, namely, bubble making wand and solution sets

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Absence of intent to use under Trademark Act Section 1(b) Absence of actual use under Trademark Act Section 1(b)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3169710	Application Date	12/15/2004
Registration Date	11/07/2006	Foreign Priority Date	NONE
Word Mark	T-MAXX		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 1999/11/28 First Use In Commerce: 1999/12/23 Radio-controlled model vehicles and parts therefor

U.S. Registration No.	3191106	Application Date	12/15/2004
Registration Date	01/02/2007	Foreign Priority Date	NONE
Word Mark	MAXX		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 028. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 Radio-controlled model vehicles and parts therefor

U.S. Registration No.	3619270	Application Date	10/07/2008
Registration Date	05/12/2009	Foreign Priority Date	NONE

Word Mark	E-MAXX
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 028. First use: First Use: 2000/12/04 First Use In Commerce: 2000/12/04 radio-controlled model vehicles and parts therefor
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U.S. Registration No.	3697101	Application Date	07/15/2003
Registration Date	10/13/2009	Foreign Priority Date	NONE

Word Mark	MINI MAXX
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 028. First use: First Use: 2009/07/17 First Use In Commerce: 2009/07/17 radio controlled scale model vehicles equipped with an electric motor or an internal combustion engine, and a wireless control signal receiver mounted on the vehicle enabling remote control of vehicle speed and steering, and parts therefor
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Attachments	78533121#TMSN.png(bytes) 78533111#TMSN.png(bytes) 77587094#TMSN.png(bytes) 78274583#TMSN.png(bytes) TRAX 3105019 Grounds For Cancellation.pdf(61694 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	/Gregory W. Carr/
Name	Gregory W. Carr, Esq.
Date	12/15/2015

As grounds for relief, Petitioner alleges as follows:

FACTS

1. Petitioner TRAXXAS LP ("Petitioner") is engaged in the business of the manufacture, sale and exchange of radio-controlled model vehicles and parts therefor, as well as related goods and services.

2. Petitioner has since at least November 28, 1999, used and continues to use the mark "T-MAXX" to identify, advertise, and promote its radio-controlled model vehicles and parts therefor. Petitioner registered its mark T-MAXX on November 7, 2006 (Reg. No. 3169710) for the same goods after making an application for registration on December 15, 2004. Petitioner's right to use its T-MAXX mark has become incontestable.

3. Petitioner has since at least December of 1999 used and continues to use the mark "MAXX" to identify, advertise, and promote its radio-controlled model vehicles and parts therefor. Petitioner registered its mark MAXX on January 2, 2007 (Reg. No. 3191106) for the same goods after making an application for registration on December 15, 2004. Petitioner's right to use its MAXX mark has become incontestable.

4. Petitioner has since at least December 4, 2000, used and continues to use the mark "E-MAXX" to identify, advertise, and promote its radio-controlled model vehicles and parts therefor. Petitioner registered its mark E-MAXX on May 12, 2009 (Reg. No. 3619270) for the Goods after making an application for registration on October 7, 2008. Petitioner's right to use its E-MAXX mark has become incontestable.

5. Petitioner has since at least July 17, 2009, used and continues to use the mark "MINI MAXX" to identify, advertise, and promote its parts for radio controlled scale model vehicles. Petitioner registered its mark MINI MAXX on October 13, 2009 (Reg.

No. 3697101) for the same goods after making an application for registration on July 15, 2003.

6. Petitioner has expended, and continues to expend, substantial efforts and sums advertising and promoting its goods offered in connection with the T-MAXX, MAXX, E-MAXX, and MINI MAXX marks.

7. There is no issue as to priority or priority of use. Petitioner has used the T-MAXX, MAXX, E-MAXX, and MINI MAXX marks in connection with its goods since prior to the 2014 filing date in the U.S. Patent and Trademark Office of Registrant.

8. Petitioner has acquired and now enjoys substantial goodwill and a valuable reputation under its T-MAXX, MAXX, E-MAXX, and MINI MAXX marks. Petitioner's T-MAXX, MAXX, E-MAXX, and MINI MAXX marks have become well known within the trade and among the relevant consuming public.

9. On December 1, 2014, Registrant filed an amendment (the "Amendment") in its application for registration of the "MAXX SPINNER" designation (the "Application"). The Amendment amended the Application to state a filing basis of Trademark Act § 1(b), 15 U.S.C. § 1051(b), intent to use.

10. The Application contained the following listing of goods (the "Listing of Goods"):

Toys, namely, toy game balls, balls for sports, hand balls, play balls, sport balls, hand-held toy figures, dolls, doll playsets, action figure toys, bath toys, bathtub toys, battery-operated action toys, bendable toys, collectable toy figures, construction toys, crib toys, cat toys, dog toys, drawing toys, electric action toys, electronic learning toys, electric toy vehicles, electronically operated toy motor vehicles, fantasy character toys, toy flying saucers, infant toys, mechanical toys, model toy vehicles, modeled plastic toy figurines, molded toy figures, music box toys, musical toys, non-electronic toy vehicles, party favors in the nature of small toys, pet toys, plastic character toys, play mats for use with toy vehicles, plush toys, pop-up toys, printing toys, positionable toy figures, pull toys, punching toys, push toys, radio-

controlled toy vehicles, ride-able toy vehicles, role playing toys in the nature of play sets for children to imitate real life occupations, rubber character toys, sand toys, sandbox toys, scale model kits, sketching toys, soft sculpture toys, squeeze toys, stacking toys, stuffed and plush toys, stuffed toys, talking toys, tossing disc toys, toy airplanes, toy and novelty face masks, toy animals, toy armor, toy artificial fingernails, toy bake-ware and cookware, toy balloons, toy banks, toy boats, toy bows and arrows, toy building blocks, toy butterfly nets, toy candy dispensers, toy cars, toy clocks and watches, toy construction blocks, toy construction sets, toy figures, toy film cartridges and viewers, toy fireworks, toy furniture, toy gliders, toy houses, toy masks, toy microscopes, toy mobiles, toy model train sets, toy model hobby-craft kits, toy modeling dough, toy music boxes, toy pistols, toy putty, toy record players, toy robots, toy rockets, toy scooters, toy snow globes, toy swords, toy telescopes, toy tools, toy vehicles, toy watches, toy water globes, toy weapons, toy whistles, bean bag animals, transforming robotic toys, water squirting toys, water toys, wind-up toys, disc toss toys, children's multiple activity toys, articles of clothing for toys, baby multiple activity toys, cases for toy vehicles, cases for toy dolls, toy dolls, kites; games, namely, board games, card games, hand-held units for playing video games other than those adapted for use with an external display screen or monitor, puzzle games, hand-held units for playing electronic games other than those adapted for use with an external display screen or monitor, apparatus for electronic games other than those adapted for use with an external display screen or monitor; electronic building blocks that light up; electronic toy vehicles; plush animals that play music, toy guitars, toy musical instruments, toy pianos, toy drums; girls' toys, namely, dolls, figurines, plush toys, plastic character toys, children's dress-up accessories, role play toys in the nature of play sets for children to imitate real life occupations; boy's toys, namely, action figures; action toys, namely, electronic action toys; figurines, namely, molded plastic toy figurines; character toys, namely, plastic character toys and plush character toys; toy with book, namely, children's multiple activity toys sold as a unit with printed book; children's games, namely, board games, card games, puzzle games, and apparatus for electronic games other than those adapted for use with an external display screen or monitor; toy electronics, namely, electronic educational game machines for children and electronic non-educational game machines for children; Squeezable electronic toy animals made of plastic that light up and make noises; Bubble making gun and solution sets; Bubble making wand and solution sets; Bubble toys, namely, bubble making wand and solution sets

11. As of the filing date of the Application, Registrant only intended to use in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with a single product, the “MAXX SPINNER” toy shown in the specimen submitted on September 24, 2015 (the “Specimen Toy”).

12. The Specimen Toy is not in the “Listing of Goods.”

13. In the Amendment, Registrant falsely stated that, as of the filing date of the Application, it had a bona fide intention to use in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with all of the goods in the “Listing of Goods.”

14. This bona fide intention to use in commerce was required by § 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

15. When submitting the Amendment, Registrant knew it did not have the bona fide intention it claimed to have.

16. Registrant made the false statement in the Amendment intending to cause the U.S. Patent and Trademark Office (USPTO) to grant the registration.

17. Registrant made the false statement in the Amendment intending to induce the USPTO to grant the registration.

18. On September 24, 2015, Registrant filed a statement of use (the “Statement of Use”) in the Application.

19. In the Statement of Use, Registrant falsely stated that the “MAXX SPINNER” designation was in use in commerce, as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127, on or in connection with all of the goods in the “Listing of Goods.”

20. Use in commerce on or in connection with all of the goods in the “Listing of Goods” was required by § 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

21. As of the filing of the Statement of Use, Registrant had used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with only a single product, the Specimen Toy.

22. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy game balls.

23. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with balls for sports.

24. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with hand balls.

25. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with play balls.

26. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with sport balls.

27. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with hand-held toy figures.

28. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with dolls.

29. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with doll playsets.

30. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with action figure toys.

31. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with bath toys.

32. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with bathtub toys.

33. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with battery-operated action toys.

34. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with bendable toys.

35. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with collectable toy figures.

36. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with construction toys.

37. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with crib toys.

38. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with cat toys.

39. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with dog toys.

40. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with drawing toys.

41. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with electric action toys.

42. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with electronic learning toys.

43. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with electric toy vehicles.

44. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with electronically operated toy motor vehicles.

45. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with fantasy character toys.

46. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy flying saucers.

47. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with infant toys.

48. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with mechanical toys.

49. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with model toy vehicles.

50. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with modeled plastic toy figurines.

51. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with molded toy figures.

52. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with music box toys.

53. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with musical toys.

54. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with non-electronic toy vehicles.

55. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with party favors in the nature of small toys.

56. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with pet toys.

57. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with plastic character toys.

58. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with play mats for use with toy vehicles.

59. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with plush toys.

60. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with pop-up toys.

61. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with printing toys.

62. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with positionable toy figures.

63. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with pull toys.

64. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with punching toys.

65. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with push toys.

66. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with radio-controlled toy vehicles.

67. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with ride-able toy vehicles.

68. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with role playing toys in the nature of play sets for children to imitate real life occupations.

69. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with rubber character toys.

70. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with sand toys.

71. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with sandbox toys.

72. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with scale model kits.

73. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with sketching toys.

74. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with soft sculpture toys.

75. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with squeeze toys.

76. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with stacking toys.

77. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with stuffed and plush toys.

78. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with stuffed toys.

79. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with talking toys.

80. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with tossing disc toys.

81. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy airplanes.

82. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy and novelty face masks.

83. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy and novelty face masks.

84. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy animals.

85. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy armor.

86. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy artificial fingernails.

87. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy bake-ware and cookware.

88. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy balloons.

89. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy banks.

90. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy boats.

91. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy bows and arrows.

92. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy building blocks.

93. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy butterfly nets.

94. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy candy dispensers.

95. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy cars.

96. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy clocks and watches.

97. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy construction blocks.

98. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy construction sets.

99. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy figures.

100. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy film cartridges and viewers.

101. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy fireworks.

102. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy furniture.

103. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy gliders.

104. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy houses.

105. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy masks.

106. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy microscopes.

107. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy mobiles.

108. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy model train sets.

109. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy model hobby-craft kits.

110. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy modeling dough.

111. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy music boxes.

112. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy pistols.

113. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy putty.

114. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy record players.

115. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy robots.

116. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy rockets.

117. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy scooters.

118. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy snow globes.

119. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy swords.

120. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy telescopes.

121. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy tools.

122. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy vehicles.

123. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy watches.

124. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy water globes.

125. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy weapons.

126. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy whistles.

127. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with bean bag animals.

128. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with transforming robotic toys.

129. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with water squirting toys.

130. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with water toys.

131. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with wind-up toys.

132. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with disc toss toys.

133. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with children's multiple activity toys.

134. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with articles of clothing for toys.

135. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with baby multiple activity toys.

136. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with cases for toy vehicles.

137. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with cases for toy dolls.

138. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy dolls.

139. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with kites.

140. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with board games.

141. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with card games.

142. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with hand-held units for playing video games other than those adapted for use with an external display screen or monitor.

143. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with puzzle games.

144. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with hand-held units for playing electronic games other than those adapted for use with an external display screen or monitor.

145. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with apparatus for electronic games other than those adapted for use with an external display screen or monitor.

146. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with electronic building blocks that light up.

147. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with electronic toy vehicles.

148. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with plush animals that play music.

149. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy guitars.

150. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy musical instruments.

151. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy pianos.

152. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with toy drums.

153. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with dolls.

154. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with figurines.

155. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with plush toys.

156. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with plastic character toys.

157. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with children's dress-up accessories.

158. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with role play toys in the nature of play sets for children to imitate real life occupations.

159. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with action figures.

160. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with electronic action toys.

161. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with molded plastic toy figurines.

162. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with plastic character toys and plush character toys.

163. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with children's multiple activity toys sold as a unit with printed book.

164. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with children’s board games.

165. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with children’s card games.

166. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with children’s puzzle games.

167. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX

SPINNER” designation on or in connection with children’s apparatus for electronic games other than those adapted for use with an external display screen or monitor.

168. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with electronic educational game machines for children.

169. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with electronic non-educational game machines for children.

170. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with squeezable electronic toy animals made of plastic that light up and make noises.

171. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with bubble making gun and solution sets.

172. As of the filing of the Statement of Use, Registrant had not used in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the “MAXX SPINNER” designation on or in connection with bubble making wand and solution sets.

173. When submitting the Statement of Use, Registrant knew the “MAXX SPINNER” designation was not in use in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) on or in connection with all of the goods in the “Listing of Goods.”

174. Registrant made the false statement in the Statement of Use intending to cause the USPTO to grant the registration.

175. Registrant made the false statement in the Statement of Use intending to induce the USPTO to grant the registration.

176. On November 24, 2015, the USPTO issued Registrant's registration.

FIRST GROUND FOR CANCELLATION – LIKELIHOOD OF CONFUSION

177. Petitioner incorporates and realleges paragraphs 1 through 176.

178. Registrant's registration for the "MAXX SPINNER" designation recites "electric toy vehicles," "electronically operated toy motor vehicles," "toy flying saucers," "model toy vehicles," "non-electronic toy vehicles," "play mats for use with toy vehicles," "radio-controlled toy vehicles," "ride-able toy vehicles," "toy airplanes," "toy boats," "toy cars," "toy scooters," "toy vehicles," "cases for toy vehicles," and "electronic toy vehicles" in Class 28, all of which are overlapping with, complimentary to, and/or highly related to the goods of Petitioner.

179. Registrant's registration for "MAXX SPINNER" recites goods overlapping with, complimentary to, and/or highly related to the goods continuously offered by Petitioner under and in connection with its marks T-MAXX, MAXX, E-MAXX, and MINI MAXX since before 2014.

180. If the Registrant is permitted to retain the registration sought to be cancelled, and thereby, the *prima facie* exclusive right to use the designation "MAXX SPINNER" in commerce for the goods identified in its registration, Petitioner will be harmed in that a cloud will be placed on Petitioner's title in and to its T-MAXX, MAXX, E-MAXX, and MINI MAXX marks and Petitioner's right to enjoy the free and exclusive use thereof, and

Petitioner will be unfairly restricted in its right to register its T-MAXX, MAXX, E-MAXX, and MINI MAXX marks.

181. Registrant's U.S. filing date of the designation "MAXX SPINNER," in 2014, is after the date of first use by Petitioner of the T-MAXX, MAXX, E-MAXX, and MINI MAXX marks, said dates being at least as early as 2009. Accordingly, Petitioner's rights in its T-MAXX, MAXX, E-MAXX, and MINI MAXX marks are senior to the alleged rights of Registrant in the designation "MAXX SPINNER."

182. Registrant's designation "MAXX SPINNER" so resembles Petitioner's T-MAXX, MAXX, E-MAXX, and MINI MAXX marks as to be likely to cause confusion or mistake, or to deceive, when used by Registrant in connection with the goods identified in Registrant's registration, in violation of Trademark Act § 2(d), 15 U.S.C. § 1052(d).

SECOND GROUND FOR CANCELLATION – ABSENCE OF INTENT TO USE

183. Petitioner incorporates and realleges paragraphs 1 through 182.

184. Registrant did not have a bona fide intent to use in commerce (as defined in § 45 of the Trademark Act, 15 U.S.C. § 1127) the "MAXX SPINNER" designation on or in connection with all of the goods in the "Listing of Goods" as of the filing date of the application, in violation of Trademark Act § 1(b), 15 U.S.C. § 1051(b).

THIRD GROUND FOR CANCELLATION – FRAUD DURING PROSECUTION ARISING FROM FALSE STATEMENT OF INTENTION TO USE

185. Petitioner incorporates and realleges paragraphs 1 through 184.

186. The USPTO relied on Registrant's false statement in the Amendment in issuing the registration.

187. The USPTO would not have issued the registration if the USPTO had been aware Registrant did not have the bona fide intention Registrant claimed to have in the Amendment.

188. Because Registrant committed fraud during prosecution of the Application by making the false statement in the Amendment, the “MAXX SPINNER” registration is subject to cancellation under § 14 of the Trademark Act, 15 U.S.C. § 1127.

FOURTH GROUND FOR CANCELLATION – ABSENCE OF ACTUAL USE

189. Petitioner incorporates and realleges paragraphs 1 through 188.

190. Registrant was not using the “MAXX SPINNER” designation in commerce on or in connection with all of the goods in the “Listing of Goods” as of the filing of the Statement of Use, in violation of Trademark Act § 1(b), 15 U.S.C. § 1051(b).

FIFTH GROUND FOR CANCELLATION – FRAUD DURING PROSECUTION ARISING FROM FALSE STATEMENT IN STATEMENT OF USE

191. Petitioner incorporates and realleges paragraphs 1 through 190.

192. The USPTO relied on Registrant’s false statement in the Statement of Use in issuing the registration.

193. The USPTO would not have issued the registration if the USPTO had been aware the “MAXX SPINNER” designation was not in use in commerce on or in connection with all of the goods in the “Listing of Goods.”

194. Because Registrant committed fraud during prosecution of the Application by making the false statement in the Statement of Use, the “MAXX SPINNER” registration is subject to cancellation under § 14 of the Trademark Act, 15 U.S.C. § 1127.