

ESTTA Tracking number: **ESTTA734042**

Filing date: **03/16/2016**

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	Masterchem Industries LLC		
Entity	Limited Liability Company	Citizenship	Missouri
Address	3400 W. Segerstrom Avenue Santa Ana, CA 92704 UNITED STATES		

Attorney information	Perry J. Viscounty Latham & Watkins LLP 650 Town Center Drive 20th Fl. Costa Mesa, CA 92626-1925 UNITED STATES jennifer.barry@lw.com, allison.blanco@lw.com, david.troutman@lw.com, alethia.corneil@lw.com, ipdocket@lw.com Phone:858-523-5400		
----------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

Registration Subject to Cancellation

Registration No	4085130	Registration date	01/10/2012
Registrant	PPG ARCHITECTURAL FINISHES, INC. ONE PPG PLACE PITTSBURGH, PA 15272 UNITED STATES		

Goods/Services Subject to Cancellation

Class 002. First Use: 2011/06/01 First Use In Commerce: 2011/06/01 All goods and services in the class are cancelled, namely: coatings, namely, paints for interior and /or exterior use

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3370767	Application Date	06/21/2006
Registration Date	01/15/2008	Foreign Priority Date	NONE
Word Mark	KILZ COMPLETE		

Design Mark	KILZ COMPLETE
Description of Mark	NONE
Goods/Services	Class 002. First use: First Use: 2007/08/09 First Use In Commerce: 2007/08/09 Paint primers

Attachments	78913403#TMSN.png(bytes) 4085130_Petition ot Cancel SPRED COMPLETE.pdf(25982 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	/Perry Viscounty/
Name	Perry J. Viscounty
Date	03/16/2016

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

Masterchem Industries LLC,)	Cancellation No. _____
a Missouri limited liability company,)	
)	
Petitioner,)	In re the Registration of PPG Architectural
)	Finishes, Inc.
v.)	
)	
PPG Architectural Finishes, Inc.,)	Mark: SPRED COMPLETE
a Delaware corporation,)	Registration No. 4085130
)	Registration Date: January 10, 2012
Respondent.)	
_____)	

PETITION TO CANCEL

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

Petitioner, Masterchem Industries LLC (“Petitioner”), a Missouri limited liability company, with a place of business located at 3400 W. Segerstrom Avenue, Santa Ana, CA 92704, believes that it is or will be damaged by the continued registration of the mark **SPRED COMPLETE** for “*coatings, namely, paints for interior and /or exterior use*” in International Class 2, as shown in Registration No. 4085130, owned by PPG Architectural Finishes, Inc. (“Respondent”). Accordingly, Petitioner hereby petitions for cancellation of the same under Section 14 of the Trademark Act (15 U.S.C. 1064) and 37 CFR § 2.112(b).

As grounds for the cancellation, Petitioner alleges as follows:

1. Petitioner has been and is now engaged in the business of manufacturing and sales of *paints and primers*. The mark **KILZ COMPLETE** has at all times been used in, on or with *paint primers*.

2. Prior to February 24, 2011, the filing date of the trademark application that subsequently matured into Respondent's Registration No. 4085130, Petitioner adopted and used the mark **KILZ COMPLETE** in connection with *paint primers*.

3. Petitioner first adopted and used the mark **KILZ COMPLETE** for *paint primers* at least as early as August 9, 2007.

4. Petitioner owns Federal Registration No. 3370767 for the **KILZ COMPLETE** mark, covering *paint primers* in Class 2, which registered on January 15, 2008.

5. The goods specified in Petitioner's trademark registration listed above are identified broadly. Therefore, it is presumed that the registration encompasses all goods of the type described, including those within a natural zone of expansion, that they move in all normal channels of trade, and that they are available to all potential customers. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); *In re Optical Int'l*, 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(a)(iii).

6. Petitioner's above registration is valid, unrevoked, uncanceled, and in full force and effect. Petitioner owns this registration and the trademark shown therein and all the business and goodwill connected with said marks in the United States.

7. Petitioner's above registration has reached incontestable status.

8. Since the adoption and first use of its **KILZ COMPLETE** mark, Petitioner has made substantial and continuous use of its **KILZ COMPLETE** mark in interstate commerce on and in connection with *paint primers*.

9. Petitioner's **KILZ COMPLETE** mark is now, and ever since its first use has been, applied to *paint primers*. Products and materials so marked are now and have been advertised and promoted and widely shipped, distributed, and sold in interstate commerce. Petitioner's **KILZ COMPLETE** mark is strong, well known, and of great value to Petitioner. In the mind of the trade and of the public, Petitioner's **KILZ COMPLETE** mark identifies and designates Petitioner's goods and distinguishes them from the goods of others.

10. Respondent has registered **SPRED COMPLETE** for *coatings, namely, paints for interior and/or exterior use* in Class 2.

11. Respondent's mark so resembles Petitioner's previously used and registered **KILZ COMPLETE** mark and is therefore likely, when used in connection with Respondent's goods, to cause confusion, mistake, or deception with consequent injury to Petitioner and the public.

12. Petitioner will be damaged by the continued registration of Respondent's mark because such continued registration may lead to confusing, misleading, and deceptive use of Respondent's mark and would give to Respondent color of exclusive statutory rights to such designation in violation of Petitioner's superior rights.

WHEREFORE, Petitioner requests that U.S. Registration No. 4085130, registered on January 10, 2012, for the mark **SPRED COMPLETE** be cancelled.

Please recognize as attorneys for Petitioner Perry J. Viscounty, Jennifer L. Barry, David D. Troutman, and all other attorneys of the law firm of Latham & Watkins LLP, 650 Town Center Drive, Suite 2000, Costa Mesa, California 92626-1925. Please address all communications to Perry J. Viscounty of Latham & Watkins LLP at the address set forth below.

Respectfully submitted,

LATHAM & WATKINS LLP

Dated: March 16, 2016

By:



Perry J. Viscounty
650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
(714) 755-8288 / (714) 755-8290 Fax
ipdocket@lw.com

Attorneys for Petitioner
Masterchem Industries LLC

CERTIFICATE OF SERVICE

I, Perry J. Viscounty, hereby certify that I served a true and correct copy of the foregoing PETITION TO CANCEL by U.S. Mail upon:

PPG Architectural Finishes, Inc.
One PPG Place
Pittsburgh, PA 15272

with a copy to their Correspondent:

Bharati Bakshani
Ladas & Parry LLP
1040 Avenue of the Americas
New York, NY 10018

on March 16, 2016



Perry J. Viscounty