

ESTTA Tracking number: **ESTTA738330**

Filing date: **04/06/2016**

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	LES PROMOTIONS ATLANTIQUES INC./ATLANTIC PROMOTIONS INC.		
Entity	Corporation	Citizenship	CANADA
Address	770 Guimond Blvd Longueuil, Quebec, J4G1V6 CANADA		

Attorney information	Frank P. Presta Nixon & Vanderhye PC 901 N. Glebe Rd. 11th Floor Arlington, VA 22203 UNITED STATES nixonptomail@nixonvan.com Phone:7038164100		
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Registration Subject to Cancellation

Registration No	4604162	Registration date	09/16/2014
International Registration No.	NONE	International Registration Date	NONE
Registrant	WARIMEX WAREN-IMPORT-EXPORT HANDELS GMBH NEURIED, 77743 GERMANY		

Goods/Services Subject to Cancellation

Class 021. First Use: 0 First Use In Commerce: 0
All goods and services in the class are cancelled, namely: Cooking pot sets; Cookware, namely, pots and pans; Frying pans; Pot lids; Woks

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.	4599659	Application Date	03/18/2013
Registration Date	09/09/2014	Foreign Priority Date	11/27/2012
Word Mark	THE ROCK		

Design Mark	THE ROCK
Description of Mark	NONE
Goods/Services	Class 021. First use: First Use: 0 First Use In Commerce: 0 Cookware, namely, pots, pans, fry pans, saucepans, non-electric broilers, roasting pans, dutch ovens, skillets and bakeware, namely, cake, pie and bread moulds

Attachments	85879210#TMSN.png(bytes) 551-294 Petition for Cancellation.pdf(274262 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	/Frank P. Presta/
Name	Frank P. Presta
Date	04/06/2016

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

In the Matter of Registration No. 4,604,162, dated September 16, 2014

LES PROMOTIONS ATLANTIQUES)	
INC./ATLANTIC PROMOTIONS INC.)	
)	
Petitioner,)	
)	Cancellation No. _____
v.)	
)	Docket No. 551-294
WARIMEX WAREN-IMPORT-EXPORT)	
HANDELS GMBH)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Les Promotions Atlantiques Inc./Atlantic Promotions Inc., (hereinafter "Petitioner") a corporation of Canada, of 770 Guimond Blvd., Longueuil, Quebec, J4G1V6, Canada, believes that it is and will be damaged by the registration of the mark ROCKSTAR in Registration No. 4,604,162, and hereby petitions to cancel the registration.

As grounds for cancellation, it is alleged that:

1. Registration No. 4,604,162 issued on September 16, 2014, and covers the mark ROCKSTAR for cooking pot sets, cookware, namely, pots and pans, frying pans, pot lids, woks, in International Class 21.
2. Registration No. 4,604,162 claims priority under section 44(d) on Australian Application No. 1564642, filed on June 25, 2013, now Registration No. 1564642, dated June 25, 2013. On information and belief, Registrant has not used the

mark ROCKSTAR on any goods or services in commerce with the United States prior to the priority date of June 25, 2013.

3. Petitioner is the owner of Registration No. 4,599,659, dated September 9, 2014 for the mark THE ROCK for cookware, namely, pots, pans, fry pans, sauce pans, non-electric broilers, roasting pans, Dutch ovens and skillets and bakeware, namely cake, pie and bread molds, in International Class 21. Registration No. 4,599,659 is based on Application No. 85/879,210 filed on March 18, 2013 and claims the priority under Section 44(d) of Canadian Application No. 1604015, filed on November 27, 2012, now Registration No. TMA862635, dated October 15, 2013.

4. Petitioner is also the owner of U.S. Application No. 86/451,667 filed on November 12, 2014, to register the mark THE ROCK for the following goods in International Classes 7, 8 and 21 based on intent to use as well as the priority of Canadian Application No. 1604015(02), filed on October 16, 2014:

Small electric kitchen appliances for dicing, mincing, slicing and chopping food, in Class 7;

Kitchen wares, namely, salt and pepper grinders, non-electric can openers, french fry cutters, non-electric food choppers, hand held and operated mechanical food processors, kitchen utensils, namely, spoons, spreaders in the nature of a small knife for butter or cheese and knives, in Class 8; and

Kitchen wares, namely garlic pressers, corkscrews, jar openers, non-electric cheese and vegetable graters, spice racks, vacuum bottle stoppers specially adapted for use with wine bottles to replace vacuum corks, cheese pressers, cutting boards, oven safe cooking plates, oven safe cooking plaques, food preserver, namely,

household storage containers for food, non-electric juicers, kitchen utensils, namely, spatulas, strainers, in Class 21.

5. Application No. 86/451,667 is currently suspended pending the filing of the registration to issue in Canada on the priority Application No. 1604015(02).

6. Petitioner is also the owner of U.S. Application No. 86/380,664, filed on August 29, 2014 to register the mark ROCK.TEC for the following goods in International Classes 2, 11 and 21 based on intent to use as well as the priority of Canadian Application No. 1671371 filed on April 4, 2014:

Non-stick surface enhancement coating for cookware, in Class 2;

Small electric kitchen appliances for dicing, mincing, slicing and chopping food, in Class 11; and

Non-stick surface enhancement coating sold as an integral component of cookware, namely pots, pans, fry pans, sauce pans, broilers, roaster, Dutch ovens, skillets, bake ware, namely, cake, pie and bread molds, in Class 21.

7. Application No. 86/380,664 is currently suspended pending the filing of the registration to issue in Canada on the priority Application No. 1671371.

8. Petitioner has used the mark THE ROCK in Canada since as early as June, 2013 on and in connection with cookware.

9. Petitioner has used the mark THE ROCK in commerce with the United States since at least as early as August, 2013 on and in connection with cookware.

10. By virtue of the marketing and sale by Petitioner of various types of cookware, kitchen appliances and kitchen wares under the mark THE ROCK, such products have acquired a favorable reputation reflected in a substantial amount of goodwill which is and will be severely impaired by the registration of the mark ROCKSTAR to Registrant for the same types of goods, namely, cookware.

11. Registrant's mark ROCKSTAR is so similar to Petitioner's registered mark THE ROCK, when used on closely related goods, namely, cookware, as to be very likely to cause confusion, mistake or lead to deception as to the source or origin of Registrant's goods when sold under its mark ROCKSTAR.

12. The cooking pot sets and cookware on which Registrant's mark ROCKSTAR is used, and the cookware, kitchen appliances and kitchen wares on which Petitioner's mark THE ROCK is used and registered are closely related products which are sold, distributed and advertised through the same channels of trade and to the same classes of purchasers. Accordingly, confusion, mistake or deception are most likely, and many persons familiar with Petitioner's mark THE ROCK are likely to buy Registrant's products under the mark ROCKSTAR in the belief that the latter are products sold or authorized by Petitioner.

13. By the grant of a registration for the mark ROCKSTAR, Registrant has obtained at least prime facia the exclusive right to use this mark on cooking pot sets and cookware. Such registration is and will be a source of damage and injury to Petitioner and to its customers who have traded with Petitioner based on reliance on its mark THE ROCK for essentially the same goods.

14. Registration No. 4,604,162 for the mark ROCKSTAR is barred by the provisions of 15 U.S.C. §1052(d) for the reason that the mark ROCKSTAR so resembles Petitioner's registered mark THE ROCK as to be likely, when applied to closely related goods, to cause confusion, mistake or to deceive.

The cancellation fee of \$300 is submitted herewith.

WHEREFORE, Petitioner prays that this petition be granted and that Registration No. 4,604,162 for the mark ROCKSTAR be cancelled.

Respectfully submitted,

**LES PROMOTIONS ATLANTIQUES
INC./ATLANTIC PROMOTIONS INC.**

Date: April 6, 2016

By: Frank P. Presta

Frank P. Presta
Attorney for Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Petition for Cancellation" was served upon the Registrant and its correspondent of record this 6th day of April, 2016, by first class mail, postage prepaid, addressed as follows:

1. Warimex Waren-Import-Export
Handels Gmbh
Auf Der Schulmatt 7-1
Neuried, Federal Republic Of Germany
77743

2. Ross A. Epstein
TechLaw LLP
P.O. Box 1416
La Jolla, CA 92038



Frank P. Presta