

ESTTA Tracking number: **ESTTA984043**

Filing date: **06/27/2019**

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 has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	Mego Corporation		
Entity	Corporation	Citizenship	United States
Address	1 Linden Place Great Neck, NY 11021 UNITED STATES		
Attorney information	Lainie E. Parker 26 Woodybrook Lane Croton-on-Hudson, NY 10520 UNITED STATES parkerptlaw@gmail.com 9142714712		

Registration Subject to Cancellation

Registration No.	4957259	Registration date	05/10/2016
Registrant	Kales, Mike 15 Whitaker Place Palm coast, FL 32164 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2016/01/29 First Use In Commerce: 2016/01/29

All goods and services in the class are subject to cancellation, namely: Online retail store services featuring a wide variety of consumer goods of others; Online retail store services featuring toys, printed materials and clothing of others

Grounds for Cancellation

No use of mark in commerce before application, amendment to allege use, or statement of use was filed	Trademark Act Sections 14(1) and 1(a), (c), and (d)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)
Other	Lack of bona fide intent to use under 15 USC 1051(b)

Related Proceedings	ESTTA 984040
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Attachments	MC_Cancellation_PetitionReg4957259June27_2019.pdf(567569 bytes) MC_canc_pet_Attachment_B1.pdf(382525 bytes) MC_Cancellation_Petition_Attachment_C.pdf(11785 bytes) MC_Cancellation_Petition_Attachment_A1.pdf(21162 bytes) MC_Cancellation_Petition_Attachment_D.pdf(208545 bytes) MC_canc_pet_Attachment_B2.pdf(199740 bytes) MC_Cancellation_Petition_Attachment_A.pdf(9087 bytes)
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Signature	/Lainie E. Parker/
Name	Lainie E. Parker
Date	06/27/2019

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

Registration No. 4,957,259

Mego Corporation,

Petitioner,

v.

Mike Kales,

: Cancellation No.

Registrant.

CANCELLATION PETITION

In the matter of trademark Registration No. 4,957,259 for the stylized letters MC, for online retail store services featuring a wide variety of consumer goods of others; online retail store services featuring toys, printed materials and clothing of others in International Class 035, registered May 10, 2016, and owned by Mike Kales, an individual, whose address of record, and to the best of petitioner's knowledge, is 15 Whitaker Place, Palm Coast, FL, US, 32164 (hereinafter "Registrant"). Mego Corporation, a corporation of the State of New

York, having offices at 1 Linden Place, Great Neck, NY 11022
(hereinafter "Petitioner"), believes that it has been, is being and will be
damaged by said registration and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Petitioner and Petitioner's predecessors in interest, all having in common that they are related to Martin Abrams ("Abrams"), managed, licensed, or consulted by Abrams, have created a dynasty of toys and collector's items under its MEGO and MC trademarks, which upon information and belief, started in 1955, when MEGO was first adopted as a trademark and continues to this day. Abrams and his Mego corporations (collectively "Mego") have seen their ups and downs through the years. Upon information and belief, in 1969, Mego adopted its Stylized MC trademark ("MC") (see Attachment A) as a symbol of all things Mego, in addition to using various MEGO trademarks. Mego's popularity quickly rose throughout the 1970's with Abrams being seen as the creator of the licensed toy figure, especially the Star Trek, DC, Marvel or

Planet of the Apes comic action figure. Mego also sold popular toy figures of television personalities, e.g., Fonzie, from Happy Days, and other famous figures, e.g., Joe Namath of the NY Giants. The fame of Mego, its toys, and its MEGO and MC trademarks continued long after it filed for bankruptcy in 1982 and long after its registrations for MEGO and MC expired in 1986 (see attachments B1 and B2). Along with this fame, Abrams and fans continued to dream of continuing the Mego legacy, making more of the Mego toy figures that had already been made and making new Mego toy figures. Over the years, Abrams has made many attempts to continue this legacy, some more successful than others, and requests this Board's assistance in cancelling this improperly obtained registration by which Registrant merely seeks to trade off Mego's enormous good will.

2. Petitioner is the owner of a trademark having the Stylized letters MC (hereinafter "Petitioner's MC") (see attachment A) and U.S. trademark application Serial No. 86746670 filed September 3, 2015, for Petitioner's MC mark (see the drawing submitted with the application in attachment A1) for a number of toys, currently identified in the Statement of Use as Toys, namely, action figure toys, bendable toys, collectable toy

figures, fantasy character toys, modeled plastic toy figurines, molded toy figures, plastic character toys, positionable toy figures, role playing toys in the nature of play sets for children to imitate real life occupations, toy animals, toy armor, toy figures, toy pistols, toy swords, toy weapons, children's multiple activity toys, cases for toy dolls, toy dolls, toy guitars, toy musical instruments; girls' toys, namely, dolls, figurines, plastic toys, role play toys; boy's toys, namely, action figures; figurines, namely, molded plastic toy figurines; character toys, namely, plastic character toys; dolls and playsets therefor; playset buildings; playsets for dolls; playsets for toys; collectible dolls; collectables, namely, toy figures; collectable dolls; collectable figures; plastic dolls.

3. Petitioner, Mego Corporation, sells its toy figures depicting the legendary original and licensed action figures, sports and entertainment personalities that made Mego famous, as well as new lines of toy figures under Petitioner's MC trademark.

4. Upon information and belief, Petitioner's MC trademark was first used at least as early as 1969.

5. On April 15, 2015, Registrant filed US intent-to-use Trademark application No. 86597760 to register the stylized letters MC (hereinafter “Registrant’s MC”), which is identical to Petitioner’s MC, under Section 1(b). The identification of services in Registrant’s application was for online retail store services featuring a wide variety of consumer goods of others; online retail store services featuring toys, printed materials and clothing of others in International Class 035. This application was assigned Serial No. 86597760 and subsequently matured into Registration No. 4,957,259, which is the subject of this petition. See Registrant’s MC from the drawing submitted with application no. 86597760, Attachment C.

6. Upon information and belief, Petitioner became aware of Registrant’s Registration of Registrant’s MC on or about June 4, 2018. Upon information and belief, on or about June 4, 2018, Registrant was not using Registrant’s MC in commerce, in connection with any of the services identified in the application, as a trademark/service mark to indicate the source of the services. Instead, upon information and belief, Registrant was

using MIKE'S DEAD FORMATS as a trademark/service mark to indicate the source of the services. Registrant has since registered the trademark/service mark MIKE'S DEAD FORMATS and claims a first use date of June 8, 2015. See Attachment D.

7. Upon information and belief, at the time Registrant filed application Serial No. 86597760, i.e., April 15, 2015, he had no intent to use Registrant's MC in commerce, in connection with any of the services identified in the application, as a trademark/service mark to indicate the source of the services. Instead, upon information and belief, Registrant intended to continue to use his trademark Mike's Dead Formats to indicate the source of the services for selling any number of items. The registration is therefore invalid because the application was void *ab initio*, since Registrant, at the time of application, lacked a *bona fide* intention to use Registrant's MC as a mark to indicate source, as required under 15 USC § 1051(b).

8. On November 3, 2015, the USPTO issued a Notice of Allowance for application Serial No. 86597760 which included all of the services as listed in the application.

9. On February 8, 2016, Registrant (then Applicant), filed a Statement of Use Under 37 C.F.R. §2.88 With Declaration. In the Statement of Use, Registrant stated that it was using the mark in commerce in connection with "all of the goods/services... listed in the application or Notice of Allowance." Registrant also stated that the mark was first used at least as early as January 29, 2016 and that it was first used in commerce at least as early as January 29, 2016 and that it is now (then February 8, 2016) in use in such commerce.

10. Upon information and belief, at the time Registrant filed the Statement of Use for application Serial No. 86597760, i.e., February 8, 2016, it had not commenced use of Registrant's MC in commerce, in connection with any of the services identified in the application or the Notice of Allowance for the application, as a trademark/service mark to indicate the

source of the services. The registration is therefore invalid due to non-use of Registrant's MC a trademark/service mark to indicate the source of the services.

11. Upon information and belief, Registrant has not commenced use of Registrant's MC in commerce, on or in connection with any of the services of Registration No. 4,957,259, as a trademark/service mark to indicate the source of the services, as of the date of this petition.

12. Upon information and belief, neither Registrant, nor any licensee of Registrant, is using Registrant's MC in the United States currently for any of the services listed in the registration, as a trademark/service mark to indicate the source of the services.

13. Upon information and belief, Registrant failed to comply with the requirements of 15 U.S.C. § 1051(d)(1) in that the Statement of Use and alleged specimen filed therewith by Registrant on February 8, 2016, did not in fact reflect Registrant's use of Registrant's MC as a trademark in commerce as stated therein.

14. Upon information and belief, the alleged specimen submitted by Registrant on February 8, 2016 with the Statement of Use, is not an actual screenshot of Registrant's website or facsimile thereof which was, at that time, or any other time thereafter, used by Registrant in commerce on or in connection with the services. Instead, upon information and belief, the alleged specimen was a mock-up, fabricated screenshot made for falsely alleging that Registrant's MC was being used a trademark/service mark.

15. Upon information and belief, Registration No. 4,957,259 was obtained fraudulently based upon the verified statements of an intent to use a mark, which were made by Registrant (then Applicant) upon filing the application, which were untrue, which were known by Registrant to be untrue at the time they were made or made with reckless disregard for the truth thereof, and made for the purpose of inducing the USPTO to issue the registration. To wit, upon information and belief, Registrant knew, when he filed the application, that he did not have a *bona fide* intent to use Registrant's MC as a mark to indicate the source of the services, and knew that a *bona fide* intention to use Registrant's MC as a mark was required by

the USPTO in order to file the application, and that it was required by the USPTO for that application to be the proper basis for a registration, and, thus, made the untrue statement of a *bona fide* intent to use Registrant's MC as a mark in order to induce the USPTO to ultimately issue a registration. The registration is therefore invalid in its entirety and should be cancelled.

16. Upon information and belief, Registration No. 4,957,259 was obtained fraudulently based upon the verified statements of use of Registrant's MC as a mark made by Registrant which were untrue, known by Registrant to be untrue at the time they were made or made with reckless disregard for the truth thereof, and made for the purpose of inducing the USPTO to issue the registration. To wit, upon information and belief, Registrant knew, when he filed the statement of use, that the requisite use had not been made, but filed the statement of use because he knew that the USPTO would not issue the registration without filing the statement of use, and made the false statement of use in order to induce the USPTO to ultimately issue the registration. The registration is therefore invalid in its entirety and should be cancelled.

17. Upon information and belief, Registration No. 4,957,259 was obtained fraudulently based upon the verified statements of use of the mock-up specimen made by Registrant which were untrue, known by Registrant to be untrue at the time they were made or made with reckless disregard for the truth thereof, and made for the purpose of inducing the USPTO to issue the registration. To wit, upon information and belief, Registrant knew that the alleged specimen being submitted was not the requisite specimen showing Registrant's MC being used as a mark in commerce, but, instead, a mock-up made only for the purpose of having a specimen to submit with a statement of use, and Registrant knew that a specimen needed to be submitted with the statement of use to induce the USPTO to issue the registration. The registration is therefore invalid in its entirety and should be cancelled.

WHEREFORE, Petitioner believes that it has been, is being and will continue to be damaged by said registration and prays that it be cancelled.

Dated:
June 27, 2019
Croton on Hudson, New York

Respectfully submitted,

/Lainie E. Parker/
Lainie E. Parker
Attorney for Petitioner

26 Woodybrook Lane
Croton on Hudson, New York 10520
(914) 271-4712



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Typed Drawing

Word Mark MEGO

Goods and Services (CANCELLED) IC 028. US 022. G & S: Equipment (or Apparatus) for Playing Dart, Target, Bingo, Checker and Similar Games; Puzzles; Dolls; Stuffed Animal Toys; Toy Miniature Vehicles; Musical Toys; Mechanical Toys; Wood Blocks; Doll Carriages; and Footballs, Basketballs, Fishing Sets, Croquet Sets, and Baseball Gloves for Children. FIRST USE: 19550912. FIRST USE IN COMMERCE: 19550912

Mark Drawing Code (1) TYPED DRAWING

Serial Number 72071596

Filing Date April 15, 1959

Current Basis 1A

Original Filing Basis 1A

Registration Number 0706920

Registration Date November 8, 1960

Owner (REGISTRANT) Mego Corp. CORPORATION NEW YORK New York NEW YORK
(LAST LISTED OWNER) MEGO CORP. CORPORATION NEW YORK 8 W. 26TH ST. NEW YORK 10 NEW YORK

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

Renewal 1ST RENEWAL 19801108

Live/Dead Indicator DEAD

Cancellation Date September 29, 1986

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[TSDR](#)[ASSIGN Status](#)[TTAB Status](#)*(Use the "Back" button of the Internet Browser to return to TESS)***Word Mark** MC**Goods and Services** (CANCELLED) IC 028. US 022. G & S: TOYS-NAMELY, TOY WALKIE-TALKIE COMMUNICATION SETS, TOY TAPE RECORDERS AND A COMMUNICATION CONSOLE, TOY GUNS USING FLASHLIGHTS AS AN INTEGRAL PART THEREOF, DOLLS, DOLL CLOTHING, DOLL ACCESSORIES, INFLATABLE TOYS, STUFFED TOYS AND ANIMALS, BATTERY OPERATED TOYS, WIND-UP TOYS, BOARD GAMES, ACTION GAMES, TOY AIRPLANE GLIDERS, AND PLAYSETS-NAMELY, TOY REPRODUCTIONS OF DRESSING ROOMS, GYMNASIUMS, MEETING ROOMS, PREHISTORIC SCENERY, GROCERY STORES, FARMS, TREE HOUSES, AND DOLL HOUSES. FIRST USE: 19690917. FIRST USE IN COMMERCE: 19690917**Mark Drawing Code** (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM**Serial Number** 73062480**Filing Date** September 8, 1975**Current Basis** 1A**Original Filing Basis** 1A**Registration Number** 1132281**Registration Date** April 1, 1980**Owner** (REGISTRANT) MEGO CORP CORPORATION NEW YORK ONE MADISON SQUARE PLZ. NEW YORK, N.Y. 10017**Description of Mark** THE MONOGRAM MARK IS FORMED FROM THE LETTERS "MC.".**Type of Mark** TRADEMARK**Register** PRINCIPAL**Live/Dead Indicator** DEAD**Cancellation Date** August 21, 1986[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [TOP](#) [HELP](#)







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Typed Drawing

Word Mark MEGO

Goods and Services (CANCELLED) IC 028. US 022. G & S: Equipment (or Apparatus) for Playing Dart, Target, Bingo, Checker and Similar Games; Puzzles; Dolls; Stuffed Animal Toys; Toy Miniature Vehicles; Musical Toys; Mechanical Toys; Wood Blocks; Doll Carriages; and Footballs, Basketballs, Fishing Sets, Croquet Sets, and Baseball Gloves for Children. FIRST USE: 19550912. FIRST USE IN COMMERCE: 19550912

Mark Drawing Code (1) TYPED DRAWING

Serial Number 72071596

Filing Date April 15, 1959

Current Basis 1A

Original Filing Basis 1A

Registration Number 0706920

Registration Date November 8, 1960

Owner (REGISTRANT) Mego Corp. CORPORATION NEW YORK New York NEW YORK
(LAST LISTED OWNER) MEGO CORP. CORPORATION NEW YORK 8 W. 26TH ST. NEW YORK 10 NEW YORK

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

Renewal 1ST RENEWAL 19801108

Live/Dead Indicator DEAD

Cancellation Date September 29, 1986

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