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

Proceeding	91214349
Party	Defendant Imperial Tobacco Limited
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Submission	Motion to Dismiss - Rule 12(b)
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Signature	/Angelique M. Riordan/
Date	12/15/2014
Attachments	STGL v. Imperial - 91214349 - Mtn to Dismiss.pdf(4567048 bytes)

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being filed electronically with the Trademark Trial and Appeal Board via ESTTA, on the date below:
December 15, 2014

/Angelique M. Riordan/
Angelique M. Riordan

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

**SCANDINAVIAN TOBACCO
GROUP LANE LTD.,**

Opposer

v.

IMPERIAL TOBACCO LTD.,

Applicant.

Opposition No.: 91-214,349

Serial No.: 85/898,370

Trademark:



**APPLICANT'S MOTION TO DISMISS THE OPPOSITION FOR
FAILURE TO STATE A CLAIM**

Pursuant to Federal Rule of Civil Procedure (FRCP) 12(b)(6) and TBMP § 503, IMPERIAL TOBACCO, LTD. (“Imperial” or “Applicant”) moves the Trademark Trial and Appeal Board (the “Board”) to dismiss the above-captioned proceeding for failure to state a claim upon which relief may be granted. In the alternative, Applicant moves to strike those purported causes of action and bases which do not meet the applicable standards as set forth below.

Introduction

On January 8, 2014, Scandinavian Tobacco Group Lane, Ltd. (“Scandinavian Tobacco” or “Opposer”) filed Opposition No. 91-214,349 against the trademark GOLDEN VIRGINIA & Design, Appln. No. 85/898,370, owned by Applicant Imperial. The ESTTA cover sheet to the Notice of Opposition lists three grounds for the opposition: (1) Priority and Likelihood of Confusion; (2) Fraud; (3) Improper Priority Claim Under § 44. However, Opposer’s Notice of Opposition does not provide an adequate legal basis or any facts, let alone sufficient facts, for

any of the grounds that, if proven true, would entitle Opposer to the relief sought.

For the reasons set forth below, Applicant moves to dismiss the proceeding entirely for failure to state a claim upon which relief may be granted. In the alternative, Applicant moves to strike those purported causes of action and bases which do not meet the applicable standards as set forth below.

Argument

“A motion to dismiss for failure to state a claim upon which relief can be granted is a test solely of the legal sufficiency of a complaint.”¹ Under the Trademark Rules and precedent, a complaint must include a short and plain statement of a claim, the elements of the claim, and enough factual support to show that the pleader is entitled to relief and to give the defendant fair notice.² Therefore, to survive a motion to dismiss, a complaint must state more than bare conclusory allegations, such that the facts in the complaint are sufficient enough to make any claim within it plausible on its face.³ Each and every allegation must be supported by at least a modicum of details. *Id.* Such details are necessary not only to give the defendant fair notice of the basis of each claim, but also to show the Board that a right to relief exists assuming all such facts and allegations are taken to be true.⁴

The “detail” provided by Opposer in Opposer’s Notice does not meet the minimal pleading standards. As the courts have held,

While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligations to provide the “grounds” of

¹ *Petróleos Mexicanos v. Intermix S.A.*, 97 USPQ2d 1403 (TTAB 2010); *Fair Indigo LLC v. Style Conscience*, 85 USPQ2d 1536, 1538 (TTAB 2007); TBMP §503.02.

² *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Fair Indigo LLC*, 85 USPQ2d at 1538 (elements of each claim should be stated concisely and directly, and include enough detail to give the defendant fair notice); *McDonnell Douglas Corp. v. National Data Corp.*, 228 USPQ 45, 48 (TTAB 1985) (petitioner’s Trademark Act § 2(a), 15 U.S.C. § 1052(a) allegations were merely conclusory and unsupported by factual averments); *Ashcroft v. Iqbal*, 556 U.S. ___, 129 S.Ct. 1937 (2009), *quoting Twombly*, 550 U.S. at 570; 37 C.F.R. §2.104(a); TBMP §309.03(a)(2); Fed. R. Civ. P. 8(a)(2).

³ *Twombly*, 550 U.S. at 570; TBMP §503.02.

⁴ *See Fair Indigo LLC*, 85 USPQ2d at 1538; TBMP §309.02(a)(2) (“A pleading should include enough detail to give the defendant fair notice of the basis for each claim”).

his “entitle[ment] to relief” require more than labels and conclusion, and a formulaic recitation of a cause of action’s elements will not do. *Factual allegations* must be enough to raise a right to relief above the speculative level on the assumption that all the complaint’s allegations are true.⁵

Here, Opposer’s Notice provides no legal basis, details or facts whatsoever upon which to base any of the three claims. In fact, as explained below, the only *facts* presented within the complaint are claims regarding Opposer’s long since abandoned registration, cancelled as the result of an *inter partes* cancellation action based on the claim that Registrant abandoned Reg. No. 747146⁶, and *facts* surrounding Applicant’s foreign trademarks, which are wholly irrelevant to a U.S. Opposition proceeding before the Board, and should be disregarded. Because Opposer has failed to provide any factual or legal basis for its claims, all three claims are legally insufficient to raise a right to relief, and the entire opposition should be dismissed.

In the alternative, under TBMP § 506.01, “the Board may order stricken from a pleading ... any redundant, immaterial, impertinent or scandalous matter.”⁷ “The Board also has the authority to strike an impermissible or insufficient claim or portion of a claim from a pleading.”⁸ Although motions to strike are not favored, they are permissible and will be granted when appropriate.⁹ As such, in the alternative, Applicant moves to strike all extraneous, irrelevant and legally impermissible allegations, and moves to entirely strike those claims for which Opposer Scandinavian Tobacco fails to provide a proper foundation.

I. Opposer’s Claim that Applicant’s Priority Claim is Improper Is Insufficient and Lacks Any Legal or Factual Basis and Should be Dismissed

Opposer’s Notice of Opposition attempts to re-write trademark law in an attempt to establish a legal basis for its claim that Applicant’s priority claim is invalid. According to TBMP

⁵ *Twombly*, 550 U.S. at 545 (emphasis added).

⁶ See Opposer’s Notice of Opposition (hereinafter “Notice”), Exhibit A ¶ 4.

⁷ Fed. R. Civ. P. 12(f); *Ohio State Univeristy v. Ohio University*, 51 USPQ2d 1289, 1292 (TTAB 1999); *Internet Inc. v. Corp. for Nat’l Research Initiatives*, 38 USPQ2d 1435, 1438 (TTAB 1996); TBMP § 506.01.

⁸ *Ohio State Univeristy*, 51 USPQ2d at 1293; TBMP § 506.01.

⁹ *Id.*

§1003, an applicant may claim priority where this priority claim is made within six months of the filing date of a first-filed foreign application. Here, it is uncontested that Applicant filed Appln. No. 85/898,370 on April 8, 2013¹⁰, claiming a priority date of December 24, 2012 based on CTM Appln. No. 011453156¹¹. Based on these uncontested facts, it is clear that Applicant filed Appln. No. 85/898,370 well within the 6-month timeframe set out in the TBMP. Opposer, then, tries to *back-up* its baseless claim by bringing in information regarding Applicant Imperial's foreign applications for the word mark GOLDEN VIRGINIA (alone, without any design)¹². Not only are these completely irrelevant in that this is a US proceeding, but these foreign applications and registrations are not even for the same trademark as the mark at issue (i.e. GOLDEN VIRGINIA & Design).

Opposer goes even further to reach for anything that could possibly save its baseless claim by attempting to argue that, despite well-established trademark rules surrounding priority claims and trademarks in general, since Applicant has other previously-filed international applications for the word mark GOLDEN VIRGINIA, alone, the mark of Appln. No. 85/898,370 should be dissected (i.e. separating the word mark GOLDEN VIRGINIA from the design element of the mark) and the priority claim should only extend to the design portion of the mark. Not only is this *theory* completely unsupported by trademark law, but it is well established that a trademark should be considered in its entirety and should not be dissected. If Opposer's theory were valid, which it is not, any design mark incorporating a previously-filed word mark would be refused as a duplicate mark, which is clearly not the case. A word mark and design mark (i.e. GOLDEN VIRGINIA and GOLDEN VIRGINIA & Design) are two different trademarks.

II. Opposer's Fraud Claim Is Insufficient and Should Be Dismissed

¹⁰ See Notice, Exhibit A ¶8.

¹¹ See Notice, Exhibit A ¶12.

¹² See Notice, Exhibit A ¶¶ 17-19.

On the cover page of Opposer's Notice of Opposition, "fraud" is listed as Opposer's second basis for its opposition. Opposer clearly labels the paragraphs of its Notice of Opposition that purport to allege fraud:

Bad Faith – Fraud On the Trademark Office

23. On information and belief, Applicant was well aware of [Opposer's] longtime ownership and use of the mark GOLDEN VIRGINIA in the United States.¹³
24. On information and belief, it was not a coincidence that Applicant filed a new application after the cancellation of Registration 747146.¹⁴
25. On information and belief, Applicant's CTM application, and the filing of the subject application, was done in bad faith with respect to [Opposer's] reputation and residual goodwill with respect to its longtime GOLDEN VIRGINIA mark.¹⁵

A fraud claim requires allegations that Applicant "*knowingly* [made] a false, material representation with the intent to deceive the USPTO."¹⁶ Additionally, under Fed. R. Civ. P. Rule 9(b), when alleging fraud, the pleadings must state the circumstances constituting the alleged fraud with particularity.¹⁷ The "circumstances" referred to in Fed. R. Civ. P. Rule 9(b) that must be stated specifically are the time, place and contents of the false representations, the facts misrepresented, and identification of what has been obtained for the particular application at issue in the opposition.¹⁸ Rule 9(b) requires that the pleadings contain explicit rather than implied expression of the circumstances constituting fraud.¹⁹ Here, as is clearly shown above, Opposer not only fails to allege that Applicant knowingly made any false representation with an intent to deceive the PTO, but fails to allege any facts that even remotely approach an assertion of *any* false material representation made by Applicant, at all.

Even if Opposer attempts to argue that, while it clearly highlights its intent to allege fraud

¹³ See Notice, Exhibit A ¶ 23.

¹⁴ See Notice, Exhibit A ¶ 24.

¹⁵ See Notice, Exhibit A ¶ 25.

¹⁶ *In re Bose Corp.*, 580 F. 3d 1240, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009) (emphasis added).

¹⁷ See *DaimlerChrysler Corp. v. American Motors Corp.*, 94 USPQ2d 1088 (TTAB 2010).

¹⁸ *E. & J. Gallo Winery v. Quala S.A.*, Opposition No. 91186763 (Nov. 7, 2009), citing *W.R. Grace & Co. v. Arizona Feeds*, 195 USPQ 670, 672 (Comm'r Pat. 1977); and *Saks, Inc. v. Saks & Co.*, 141 USPQ 307 (TTAB 1964).

¹⁹ See *King Automotive, Inc. v. Speedy Muffler King, Inc.*, 667 F.2d 1008, 212 USPQ 801 (CCPA 1981).

both on the cover sheet of the Notice of Opposition and in the Notice itself, it actually meant to set forth a claim of bad faith, this claim is unfounded, as well, where Applicant clearly has priority. In an attempt to establish some sort of *priority* again, Opposer makes a failed attempt at alleging residual goodwill based on its long since cancelled Reg. No. 747146 for the word mark GOLDEN VIRGINIA, which, as previously mentioned, was effectively cancelled as the result of Cancellation No. 92-056,177. Cancellation No. 92-056,177 was filed by Philip Morris USA, Inc. on September 14, 2012, alleging Registrant's abandonment of the mark of Reg. No. 747146. On January 3, 2013, the Board granted Philip Morris USA, Inc.'s petition to cancel Reg. No. 747146, entering judgment against Registrant. Philip Morris USA, Inc.'s petition to cancel stated not only that Registrant had discontinued use of the mark of Reg. No. 747146 without the intent to resume and that it had ceased all manufacturing, advertising, selling and distributing of any tobacco products under this mark, but also that Registrant had abandoned any rights it had acquired within the meaning of 15 U.S.C. § 1127²⁰.

Based on the outcome of this cancellation proceeding, not only was Reg. No. 747146 effectively abandoned, but all of Opposer's goodwill was effectively terminated and, as such, all of Opposer's attempts at claiming goodwill based on cancelled Reg. No. 747146 are completely invalid. Additionally, Opposer's pending applications, Appln. No. 85/836,728 for the mark GOLDEN VIRGINIA and Appln. No. 85/836,713 for the mark VIRGINIA GOLD, were filed based on Scandinavian Tobacco's intent to use the marks (not use of the marks), an admission that use of these marks has not yet commenced on the respective goods in the US.

Even discounting Opposer's failed attempt at alleging residual goodwill to fill the void for its lack of priority, as Opposer has admitted in its Notice, Applicant has various applications

²⁰ See Petition to Cancel, Exhibit B ¶¶ 6-7.

and registrations worldwide for the word mark GOLDEN VIRGINIA²¹. Where Applicant has a well-established intent to use the word mark GOLDEN VIRGINIA worldwide, in addition to its intent to use the mark of Appln. No. 85/898,370, Opposer has no basis for its bad faith claim.

III. Opposer's Likelihood Of Confusion Claim Is Insufficient and Lacks Any Legal or Factual Basis and Should Be Dismissed

As is well established above, Opposer does not have priority and, as such, does not have a basis for its priority and likelihood of confusion claim. Further, as also established above, Opposer cannot rely on residual goodwill in an attempt to establish priority where it does not have any valid claim of residual goodwill. Where it is clear that Applicant has priority, and where Applicant's mark at issue has been cited against Opposer's pending trademark Application Nos. 85/836,728 and 85/836,713, Opposer's likelihood of confusion claim does nothing other than to bolster the USPTO's position that Opposer's two suspended applications, Application Nos. 85/836,728 and 85/836,713, should be refused upon the registration of Applicant's Application No. 85/898,370, which has priority.

Even if Opposer were to argue that it meant, both on the cover sheet of the Notice of Opposition and in the body of the Notice, to make a false association claim (otherwise known as false suggestion of a connection) instead of a likelihood of confusion claim, Opposer fails to meet the pleading requirements and, as such, even this claim should be dismissed. In its Notice, Opposer clearly marks its "likelihood of confusion section":

Likelihood of Confusion – False Association or Sponsorship

26. On information and belief, consumers will be confused because of residual goodwill derived from [Opposer's] longtime use of its mark, as to the association or sponsorship of [Opposer] with Applicant.²²
27. For example, many state regulatory offices continue to carry [Opposer's]

²¹ See Notice, Exhibit A ¶¶ 17-19.

²² See Notice, Exhibit A ¶26.

- GOLDEN VIRGINIA brand on their rosters of approved tobacco brands.²³
28. Opposer will be injured if the subject application is registered because the mark that is the subject of the application is so similar to the residual goodwill of [Opposer's] GOLDEN VIRGINIA brand as to be likely to cause confusion as to the source or sponsorship by [Opposer] of Applicant's goods.²⁴
29. [Opposer] is likewise injured because the subject application is interfering with the registration of [Opposer's] Applications, and may interfere with [Opposer's] use of same.²⁵

As is shown above, the Notice of Opposition contains no allegations purporting to support the ground of false suggestion of a connection, especially where it has already been established that Opposer has no residual goodwill in a cancelled and abandoned mark. In *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 703 F.2d 1372 (Fed. Cir.1983), the Federal Circuit stated that to succeed on a Section 2(a) false suggestion of a connection claim, a plaintiff must demonstrate that the name or equivalent thereof claimed to be appropriated by another must be unmistakably associated with a particular personality or "persona" and must point uniquely to the plaintiff. In *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428, 429 (TTAB 1985), the TTAB required that four elements be satisfied to establish a false suggestion of a connection under Trademark Act Section 2(a): (1) the defendant's mark is the same or a close approximation of plaintiff's previously used name or identity; (2) the mark would be recognized as such; (3) the plaintiff is not connected with the activities performed by the defendant under the mark; and (4) the plaintiff's name or identity is of sufficient fame or reputation that when the defendant's mark is used on the goods or services, a connection with the plaintiff would be presumed.

While Opposer may try to argue that the Notice satisfies the first and second elements, this is not the case where it has been well established by the previously-discussed cancellation of its Reg. No. 747146 that Opposer has long-since abandoned this mark and any alleged

²³ See Notice, Exhibit A ¶27.

²⁴ See Notice, Exhibit A ¶28.

²⁵ See Notice, Exhibit A ¶29.

goodwill associated with this mark, not to mention the fact that its pending Appln. No. 85/836,728 for the mark GOLDEN VIRGINIA was filed based on an intent to use and, according to the TSDR records, use has not yet commenced. Further, Opposer has failed to allege any *facts* supporting the other two elements. None of the allegations, as shown above, support a claim that Applicant is unlawfully claiming a connection to Opposer. Further, there are no facts allege that would amount to the requirement of the fourth element, which requires an allegation of sufficient fame or reputation.

Moreover, as is the issue with Opposer's likelihood of confusion claim, Opposer must demonstrate priority over any priority date on which Applicant can rely.²⁶ As has been well established above, Opposer is unable to demonstrate priority. Without priority, these claims must be dismissed for legal insufficiency, as an essential element of each claim is omitted. As such, both Opposer's likelihood of confusion claim and any attempt at a false suggestion of a connection claim are legally insufficient and, as such, should be dismissed.

Conclusion

For the foregoing reasons, Applicant respectfully requests that Opposer's Notice of Opposition be dismissed for failure to state a claim upon which relief may be granted. In the alternative, Applicant moves to strike those purported causes of action and bases which fail to meet the applicable standards as set forth herein.

²⁶ 15 U.S.C. §1052(d); 15 U.S.C. §1052(a)²; 15 U.S.C. §1125(c).

Dated: December 15, 2014

Respectfully submitted,

Martin R. Greenstein

Angelique M. Riordan

Leah Z. Halpert

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By: /Martin R Greenstein/

Martin R. Greenstein

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S MOTION TO DISMISS OPPOSITION FOR FALIURE TO STATE A CLAIM** is being served on December 15, 2014, by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to counsel for Applicant at:

JANET F. SATTERTHWAITE
VENABLE LLP
PO BOX 34385
WASHINGTON, DC 20043-4385
UNITED STATES

/Angelique M. Riordan/
Angelique M. Riordan

EXHIBIT A

ESTTA Tracking number: **ESTTA580629**

Filing date: **01/08/2014**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Scandinavian Tobacco Group Lane Ltd.		
Entity	Corporation	Citizenship	New York
Address	2280 Mountain Industrial Boulevard Tucker, GA 30084 UNITED STATES		
Correspondence information	Janet F. Satterthwaite Venable LLP PO Box 34385 Washington, DC 20043-4385 UNITED STATES jfsatterthwaite@venable.com,pjwyles@venable.com,trademarkdocket@venable.com Phone:202-344-4974		

Applicant Information

Application No	85898370	Publication date	12/17/2013
Opposition Filing Date	01/08/2014	Opposition Period Ends	01/16/2014
International Registration No.	NONE	International Registration Date	NONE
Applicant	Imperial Tobacco Limited P.O. Box 244, Upton Road Bristol, GBX BS99UJ GBX		


Goods/Services Affected by Opposition


Class 034. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Tobacco whether manufactured or unmanufactured; tobacco products, namely, smoking tobacco and cigarillos; tobacco substitutes, none being for medicinal or curative purposes; hand rolling tobacco; cigarettes; cigarette papers; cigarette tubes; cigarette filters; pocket cigarette rolling machines; hand held machines for injecting tobacco into paper tubes; smokers' articles, namely, lighters, cigarette cases, tobacco pouches and tobacco tins; matches
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	improper priority claim under Section 44

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85836728	Application Date	01/30/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GOLDEN VIRGINIA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 0 First Use In Commerce: 0 cigarette tobacco		

U.S. Application No.	85836713	Application Date	01/30/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	VIRGINIA GOLD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 0 First Use In Commerce: 0 pipe tobacco		

Attachments	85836728#TMSN.jpeg(bytes) 85836713#TMSN.jpeg(bytes) NOTICE OF OPPOSITION GOLDEN VIRGINIA.pdf(47616 bytes) EXH A TO NOTICE OF OPPOSITION.pdf(875095 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	/Janet F. Satterthwaite/
Name	Janet F. Satterthwaite
Date	01/08/2014

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

Scandinavian Tobacco Group Lane Ltd)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
)	Serial No: 85898370
)	
)	Mark: GOLDEN VIRGINIA and Design
Imperial Tobacco Limited)	
Applicant.)	

Atty Ref. No.: 39240-358502

BOX: TTAB FEE

NOTICE OF OPPOSITION

In the matter of the applications for registration of the trademark GOLDEN VIRGINIA and Design, of Imperial Tobacco Limited, (“Applicant,”) Application Serial No. 85898370, filed on April 8, 2013, and published for opposition in the Official Gazette on December 17, 2013, Opposer, Scandinavian Tobacco Group Lane Ltd., a New York Corporation, (“Lane”) believes that it will be damaged by registration of the mark shown in said Application and hereby oppose the same.

As grounds in support of this opposition, Lane asserts the following:

1. Lane manufactures and sells a variety of pipe tobacco, fine-cut tobacco, and little cigars.

2. Lane is a subsidiary of Scandinavian Tobacco Group A/S. Scandinavian Tobacco Group is the largest manufacturer of cigars in the world, the world's largest in pipe tobacco and a strong regional player in fine-cut tobacco in Scandinavia and in the United States.

3. Lane's predecessor in interest, Lane Limited, was the owner of U.S. Registration 747146 for GOLDEN VIRGINIA for "smoking tobacco." The registration set forth a first-use date of 1940.

4. Registration No. 747146 was cancelled as a result of a default judgment in an *inter partes* Cancellation action, effective January 3, 2013.

5. Lane used the mark GOLDEN VIRGINIA in the United States for many years prior to the earliest possible date upon which Applicant may rely. The mark was long associated with Lane's goods.

6. On January 30, 2013, Lane filed a new application for GOLDEN VIRGINIA for "cigarette tobacco " Serial No. 85836728.

7. On January 30, 2013, Lane also filed a new application for VIRGINIA GOLD for pipe tobacco, Serial No. 85836713. Serial Nos. 85836728 and 8536713 are referred to collectively as "Lane's Applications."

8. On April 8, 2013, over three months after the filing date of Lane's Applications,



Applicant filed the subject application for .

9. The Subject Application covers "Tobacco whether manufactured or unmanufactured; tobacco products, namely, smoking tobacco and cigarillos; tobacco substitutes, none being for

medicinal or curative purposes; hand rolling tobacco; cigarettes; cigarette papers; cigarette tubes; cigarette filters; pocket cigarette rolling machines; hand held machines for injecting tobacco into paper tubes; smokers' articles, namely, lighters, cigarette cases, tobacco pouches and tobacco tins; matches.”

10. These goods are highly related to Lane’s goods.

11. On information and belief, Applicant did not use its mark before April 8, 2013.

IMPROPER PRIORITY CLAIM

12. Applicant included a priority claim of December 24, 2012, under Section 44 of the Trademark Act based on a Community trademark (CTM) application, 011453156.

13. Because this priority claim appeared to give Applicant priority of Lane’s Applications, the Subject application has been cited against Lane’s Applications.

14. The priority claim, however, was improper.

15. Lane is damaged by the improper priority claim because Lane’s applications would otherwise be the first filed, and the subject application would not pose a bar to use and registration of Lane’s marks.

16. A priority claim under Section 44 may only be made when the application upon which the priority claim is based is the first filed anywhere in the world.

17. Applicant has filed numerous long-prior applications around the world for the word mark GOLDEN VIRGINIA.

18. For example, Applicant owns CTM registration 4,392,023, for the word mark GOLDEN VIRGINIA, which was filed in 2005 and registered in 2006, for the following goods:

Class 34: “Tobacco, whether manufactured or unmanufactured; tobacco products; tobacco substitutes, none being for medicinal or curative purposes; hand-rolling tobacco; cigarettes; smokers’ articles and matches.”

19. Applicant has other applications/registrations for this word mark around the world. For example, Applicant owns UK Registration No. 1,421,021 – filed on April 3, 1990 – for the mark GOLDEN VIRGINIA for “tobacco, whether manufactured or unmanufactured; substances for smoking, sold separately, or blended with tobacco, none being for medicinal or curative purposes; cigarette paper and books of cigarette paper; smokers' articles and matches; all included in Class 34 and all for sale in the United Kingdom and for export to and sale in all countries of the world with the exception of Bangladesh, Benin, Barbados, Canada, Cayman Islands, Cyprus, Falkland Islands, Ghana, Guadeloupe, India, Israel, Ivory Coast, Martinique, Mauritius, New Zealand, Nigeria, Oman, Pakistan, Paraguay, Qatar, Seychelles, Singapore, Sri Lanka, St. Martin (French), St. Martin (Dutch), Taiwan, Thailand, Togo, Trinidad, Turkey and Zimbabwe.” A copy of the record from the UK Intellectual Property Office’s online database is attached. Applicant also owns Australian Trademark Application 1,447,434 – filed on September 8, 2011 – for the mark GOLDEN VIRGINIA for “tobacco, whether manufactured or unmanufactured; tobacco products; tobacco substitutes; none being for medicinal or curative purposes; cigarettes; hand-rolling tobacco; matches and smokers’ articles.”

20. Copies of some of these are attached as Exhibit A hereto.

21. Therefore, the claim of priority in the subject application should extend only to the design element at best, and not to the word portion GOLDEN VIRGINIA.

22. If the priority claim were to extend only to the design element, then the subject application would no longer pose a bar to Lane's Applications.

BAD FAITH-FRAUD ON THE TRADEMARK OFFICE

23. On information and belief, Applicant was well aware of Lane's longtime ownership and use of the mark GOLDEN VIRGINIA in the United States.

24. On information and belief, it was not a coincidence that Applicant filed a new CTM application after the cancellation of Registration 747146.

25. On information and belief, Applicant's CTM application, and the filing of the subject application, was done in bad faith with respect to Lane's reputation and residual goodwill with respect to its longtime GOLDEN VIRGINIA mark.

LIKELIHOOD OF CONFUSION—FALSE ASSOCIATION OR SPONSORSHIP

26. On information and belief, consumers will be confused because of residual goodwill derived of Lane's longtime use of its mark, as to the association or sponsorship of Lane with Applicant.

27. For example, many state regulatory offices continue to carry Lane's GOLDEN VIRGINIA brand on their rosters of approved tobacco brands.

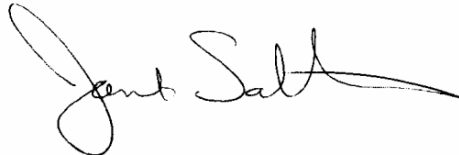
28. Lane will be injured if the subject application is registered because the mark that is the subject of the application is so similar to the residual goodwill of Lane's GOLDEN VIRGINIA brand as to be likely to cause confusion as to the source or sponsorship by Lane of Applicant's goods.

29. Lane is likewise injured because the subject application is interfering with the registration of Lane's Applications, and may interfere with Lane's use of same.

Please deduct the opposition fees from Deposit Account 22-0261.

**Please address correspondence to Janet F. Satterthwaite of Venable, LLP, P.O. Box
34385, Washington, D.C. 20045-9998.**

Respectfully submitted,
Scandinavian Tobacco Group Lane Limited

A handwritten signature in black ink, appearing to read "Janet Satterthwaite". The signature is fluid and cursive, with a large initial "J" and a long, sweeping horizontal line at the end.

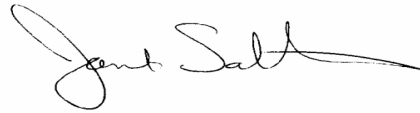
Dated: January 8, 2014

By: _____
Janet F. Satterthwaite
VENABLE LLP
P.O. Box 34385
Washington, D.C. 20043-9998
Phone: (202) 344-4000
Fax: (202) 344-8300
Email: trademarkdocket@venable.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2014, I caused a copy of the foregoing Notice of Opposition to be served by first class mail to Applicant's counsel:

MARTIN R. GREENSTEIN
TECHMARK A LAW CORPORATION
4820 HARWOOD RD, 2ND FLOOR
SAN JOSE, CALIFORNIA 95124-5200

A handwritten signature in black ink, appearing to read "Janet Satterthwaite", written in a cursive style.

Janet F. Satterthwaite

You are here: [Home](#) > [Quality plus](#) > Databases

CTM-ONLINE - Detailed trade mark information

Overview

- ▶ Trade mark
- ▶ Graphic representation
- ▶ List of goods and services
- ▶ Description of the mark
- ▶ Owner
- ▶ Representative
- ▶ Seniority
- ▶ Exhibition priority
- ▶ Priority
- ▶ International Registration Transformation
- ▶ Publication
- ▶ Opposition
- ▶ Cancellation
- ▶ Appeals
- ▶ Records
- ▶ Renewals
- ▶ Download trade mark details
- ▶ Link to CTM Bulletin online

CTM-ONLINE - Detailed trade mark information



Trade mark name : GOLDEN VIRGINIA
Trade mark No : 004392023
Trade mark basis: CTM
Date of receipt : 12/04/2005
Number of results: 11 of 14

[Request an inspection](#)

[Certified copy of the Registration Certificate](#)



Trade mark

Filing date: 12/04/2005
Date of registration: 28/02/2006
Expiry Date: 12/04/2015
Nice Classification: 34 ([Nice classification](#))
Trade mark: Individual
Type of mark: Word
Acquired distinctiveness: No
Applicant's reference: JW/DJO/99901
Status of trade mark: [Registered](#)

([Glossary](#))

[Publication of registration](#) ☒

([Publication B1 or Publication B2](#))

([History of statuses](#))

Filing language: English
Second language: French

Graphic representation

No entry for application number: 004392023.

List of goods and services

Nice Classification: 34
List of goods and services Tobacco, whether manufactured or unmanufactured; tobacco products; tobacco substitutes, none being for medicinal or curative purposes; hand-rolling tobacco; cigarettes; smokers' articles and matches.

Description

Description of the mark: -

Owner

Name: Imperial Tobacco Limited
ID No: 19050
Natural or legal person: Legal entity
Address: P.O. Box 244 Upton Road
Post code: BS99 7UJ
Town: Bristol
Country: UNITED KINGDOM
Correspondence address: Imperial Tobacco Limited P.O. Box 244 Upton Road Bristol BS99 7UJ REINO UNIDO
Telephone: 00 44-1179636636
Fax: 00 44-1179337429

Representative

Name: STEVENS HEWLETT & PERKINS
ID No: 12100
Type: 4 - Association

Address: 1 St Augustine's Place
Post code: BS1 4UD
Town: Bristol
Country: UNITED KINGDOM
Correspondence address: STEVENS HEWLETT & PERKINS 1 St Augustine's Place Bristol BS1 4UD REINO UNIDO
Telephone: 00 44-1179226007
Fax: 00 44-1179226009
E-mail: mail@shpbristol.co.uk

Seniority	
Country:	AUSTRIA
Registration number:	156393
Status:	Accepted
Filing date:	30/10/1992
Country:	BENELUX
Registration number:	0521773
Status:	Accepted
Filing date:	05/11/1992
Country:	BENELUX
Registration number:	0011520
Status:	Accepted
Filing date:	05/03/1971
Country:	FRANCE
Registration number:	92445383
Status:	Accepted
Filing date:	09/12/1992
Country:	GERMANY
Registration number:	2913467
Status:	Accepted
Filing date:	16/11/1992
Country:	GREECE
Registration number:	111759
Status:	Accepted
Filing date:	03/12/1992
Country:	IRELAND
Registration number:	149048
Status:	Accepted
Filing date:	27/04/1992
Country:	ITALY
Registration number:	0000995206
Status:	Accepted
Filing date:	30/12/1992
Country:	PORTUGAL
Registration number:	288324
Status:	Accepted
Filing date:	30/12/1992
Country:	SPAIN
Registration number:	M1734323
Status:	Accepted
Filing date:	04/12/1992
Country:	UNITED KINGDOM
Registration number:	1421021
Status:	Accepted
Filing date:	03/04/1990

Exhibition priority

No entry for application number: 004392023

Priority

No entry for application number: 004392023.

International Registration Transformation

No entry for application number: 004392023.

Publication

Bulletin no.: [2005/041](#)
Date of publication: 10/10/2005
Part: A.1

Bulletin no.: [2006/014](#)
Date of publication: 03/04/2006

Part: B.1

Bulletin no.:  [2012/213](#)
Date of publication: 08/11/2012
Part: C.8.1

Bulletin no.:  [2013/053](#)
Date of publication: 15/03/2013
Part: C.1.3

Opposition

No entry for application number: 004392023.


Cancellation


No entry for application number: 004392023

Appeals

No entry for application number: 004392023.

Recordals

Title: Seniority
Sub-title: Claim of seniority
ID No: 006810819
Bulletin no.:  [2012/213](#)
Date of publication: 08/11/2012
Part: C.8.1

Title: Owners
Sub-title: Change of name and adress of owner
ID No: 007246997
Bulletin no.:  [2013/053](#)
Date of publication: 15/03/2013
Part: C.1.3

Renewals

No entry for application number: 004392023.





**OHIM – OFFICE FOR HARMONIZATION IN THE
INTERNAL MARKET
TRADE MARKS AND DESIGNS**

CERTIFICATE OF REGISTRATION

This Certificate of Registration is hereby issued for the
Community Trade Mark identified below. The
corresponding entries have been recorded in the
Register of Community Trade Marks.

**OHMI – OFFICE DE L'HARMONISATION DANS LE
MARCHÉ INTÉRIEUR
MARQUES, DESSINS ET MODÈLES**

CERTIFICAT D'ENREGISTREMENT

Le présent Certificat d'Enregistrement est délivré pour
la marque communautaire identifiée ci-joint. Les
mentions et les renseignements qui s'y rapportent ont
été inscrits au Registre des Marques Communautaires.

Registered / Enregistré 28/02/2006

No 004392023

GOLDEN VIRGINIA

The President / Le Président

Wubbo de Boer



210 004392023
220 12/04/2005
400 10/10/2005

151 28/02/2006
450 03/04/2006

186 12/04/2015

541 GOLDEN VIRGINIA

732 Imperial Tobacco Limited
Upton Road
Southville, Bristol BS9 7UJ
GB

740 STEVENS HEWLETT & PERKINS
1 St Augustine's Place
Bristol BS1 4UD
GB

270 EN FR

511 ES - 34
Tabaco elaborado o en bruto; productos a base de tabaco; sucedáneos del tabaco, ninguno para fines medicinales o curativos; tabaco de liar; cigarrillos; artículos para fumadores y cerillas.

CS - 34
Tabák, surový nebo zpracovaný; tabákové výrobky; tabákové náhražky, ne pro medicínské anebo léčebné účely; tabák k ručnímu balení; cigarety; kurácké predmety a zápalky.

DA - 34
Behandlet eller ubehandlet tobak; tobaksprodukter; tobakserstatninger, ikke med medicinske eller helbredende formål; tobak til hjemmerulning; cigaretter; artikler for rygere og tændstikker.

DE - 34
Tabak, verarbeitet oder unverarbeitet; Tabakerzeugnisse; Tabakersatzstoffe, nicht für medizinische oder Heilzwecke; Tabak zum Selbstdrehen; Zigaretten; Raucherartikel und Streichhölzer.

ET - 34
Tubakas töödeldud või töötlemata kujul; tubakatooted; tubaka asendajad (mitte meditsiinilistel eesmärkidel); lahtine tubakas; sigaretid; suitsetajate tooted ja tikud.

EL - 34
Κατεργασμένος και μη κατεργασμένος καπνός· προϊόντα καπνού· υποκατάστατα καπνού, μη προοριζόμενα για φαρμακευτικούς ή θεραπευτικούς σκοπούς· καπνός για στριφτά τσιγάρα· τσιγάρα· είδη για καπνιστές και σπρίττα.

EN - 34
Tobacco, whether manufactured or unmanufactured; tobacco products; tobacco substitutes, none being for medicinal or curative purposes; hand-rolling tobacco; cigarettes; smokers' articles and matches.

FR - 34
Tabac à l'état brut ou traité; produits du tabac; substituts du tabac, à usage non médical ou curatif; tabac à rouler à la main; cigarettes; articles pour fumeurs et allumettes.

IT - 34
Tabacco grezzo o lavorato; prodotti a base di tabacco; succedanei del tabacco non per uso medicinale o curativo; tabacco da sigarette fatte a mano; sigarette; articoli per fumatori e fiammiferi.

LV - 34
Neapstrādāta vai rūpnieciski apstrādāta tabaka; tabakas izstrādājumi; tabakas aizstājēji, kas nav paredzēti medicīni-

skiem vai ārstnieciskiem nolūkiem; ar rokām tināmā tabaka; cigaretes; smēķēšanas piederumi un sērskociņi.

LT - 34
Neapdorotas arba apdorotas tabakas; tabako gaminiai; tabako pakaitalai, ne medicinos ar gydymo reikmėms; rankomis susukamas tabakas; cigaretės; rūkančiųjų reikmenys ir degtukai.

HU - 34
Nyers vagy gyárilag előállított dohány; dohányáru; dohány helyettesítők, nem gyógyyszeri vagy gyógyító célú; kézzel sodorható dohány; cigaretták; dohányos termékek és gyufák.

MT - 34
Tabakk kemm jekk mhux raffinat jew immaniifatturat; prodotti tat-tabakk; sostituti tat-tabakk, lebda minnhom ma jkun għall-użu medicinali jew fejjieqi; tabakk tat-trembil bl-idejn; sigaretti; artikli għal min ipejjep u sulfarini.

NL - 34
Bewerkte of onbewerkte tabak; tabaksproducten; tabakssurrogaten, niet voor medicinale of heelkundige doeleinden; tabak om sigaretten te rollen; sigaretten; artikelen voor rokers en lucifers.

PL - 34
Tytoń surowy i preparowany; wyroby tytoniowe; substytuty tytoniu, nie do celów medycznych lub leczniczych; tytoń do robienia papierosów; papierosy; artykuły dla palaczy i zapalki.

PT - 34
Tabaco, manufacturado e não manufacturado; produtos de tabaco; sucedáneos de tabaco que não sejam para fins medicinais ou curativos; tabaco de enrolar; cigarros; artigos para fumadores e fósforos.

SK - 34
Tabak, surový alebo spracovaný; tabakový produkty; tabakové náhrady, nie pre medicínske alebo liečivé účely; tabak na ťufanie cigariet; cigarety; fajčiarske predmety a zápalky.

SL - 34
Surov ali predelan tobak; tobačni izdelki; tobačni nadomestki, ne za medicinske ali kurativne namene; tobak za ročno zvijanje; cigarete; kadilski pripomočki in vžigalice.

FI - 34
Käsitetty tai käsittelemätön tupakka; tupakkatuotteet; tupakan korvikkeet, mitkään eivät ole lääkinnällisiä tai hoitotarkoituksiin; käsin rullattava tupakka; savukkeet; tupakointitarvikkeet ja tulitikut.

SV - 34
Tobak, bearbetad eller obearbetad; tobaksprodukter; tobaksersättningar, ingen för medicinska eller kurativa ändamål; lös tobak; cigaretter; artiklar för rökare och tändstickor.



Intellectual Property Office

Current case details for UK Trade Mark Number: UK00001421021

Printed On: 31 May 2013

Trade mark

GOLDEN VIRGINIA

Disclaimer: Registration of this mark shall give no right to the exclusive use of the word "Virginia".

Status: Registered

Seniority claimed for Community Trade mark [EU004392023](#)

Relevant dates

Filing date: 03 April 1990

Date of entry in register: 06 March 1992

Renewal date: 03 April 2017

List of goods

Class 34: Tobacco, whether manufactured or unmanufactured; substances for smoking, sold separately, or blended with tobacco, none being for medicinal or curative purposes; cigarette paper and books of cigarette paper; smokers' articles and matches; all included in Class 34 and all for sale in the United Kingdom and for export to and sale in all countries of the world with the exception of Bangladesh, Benin, Barbados, Canada, Caymen Islands, Cyprus, Falkland Islands, Ghana,

Guadeloupe, India, Israel, Ivory Coast,
Martinique, Mauritius, New Zealand,
Nigeria, Oman, Pakistan, Paraguay,
Qatar, Seychelles, Singapore, Sri
Lanka, St. Martin (French), St. Martin
(Dutch), Taiwan, Thailand, Togo,
Trinidad, Turkey and Zimbabwe.

Name and Address details

Owner(s) name: Imperial Tobacco Limited
PO Box 244, Southville, Bristol, BS99
7UJ, United Kingdom

[View owner's other trade marks](#)

IPO representative name: Stevens, Hewlett & Perkins
1 St Augustine's Place,, Bristol, United
Kingdom, BS1 4UD

Publication details

First advert: Journal : 5906 Date of publication :
15 January 1992

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Intellectual Property Office is an operating name of the Patent Office

[Print](#)

Trade Mark Details

Trade Mark : 1447434

Word: GOLDEN VIRGINIA
Image:
Lodgement Date: 08-SEP-2011
Acceptance Due: 28-JUN-2013
First Report: 28-OCT-2011
Class/es: 34
Status: Under Examination - Extension Fees Required
Kind: n/a
Type of Mark: Word
Examiner: Ian ARENTZ

Owner/s: **Imperial Tobacco Limited**

P.O. Box 244
Upton Road
Bristol BS99 7UJ
UNITED KINGDOM

Address for Service: **Herbert Smith Freehills**

Level 43
101 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

Goods & Services

Class: 34 Tobacco, whether manufactured or unmanufactured; tobacco products; tobacco substitutes; none being for medicinal or curative purposes; cigarettes; hand-rolling tobacco; matches and smokers' articles

Indexing Details - Word Constituents

GOLDEN VIRGINIA

Indexing Details - Image Constituents

EXHIBIT B

ESTTA Tracking number: **ESTTA494622**

Filing date: **09/14/2012**

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	Philip Morris USA Inc.		
Entity	Corporation	Citizenship	Virginia
Address	6601 West Broad Street Richmond, VA 23230 UNITED STATES		

Attorney information	Roberta L. Horton Arnold & Porter LLP 555 12th Street, N.W. Washington, DC 20004 UNITED STATES trademarkdocketing@aporter.com Phone:2029425000
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Registration Subject to Cancellation

Registration No	747146	Registration date	03/26/1963
Registrant	Lane Limited 2280 MOUNTAIN INDUSTRIAL BOULEVARD TUCKER, GA 30084 UNITED STATES		

Goods/Services Subject to Cancellation

Class U017 (International Class 034). First Use: 1940/10/00 First Use In Commerce: 1940/10/00
All goods and services in the class are cancelled, namely: Smoking Tobacco

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	GOLDEN VIRGINIA.pdf (6 pages)(138393 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	/RLH_dch/
Name	Roberta L. Horton
Date	09/14/2012

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

In re: Registration No. 747,146
Issued: March 26, 1963

_____)	
PHILIP MORRIS USA INC.,)	
)	
Petitioner,)	
)	
v.)	
)	CANCELLATION NO. _____
)	
LANE LIMITED,)	
)	
Respondent.)	
_____)	

PETITION TO CANCEL

Philip Morris USA Inc. ("Petitioner" or "PM USA") believes that it is and will continue to be damaged by the registration of GOLDEN VIRGINIA, which is the subject of Registration No. 747,146, and hereby petitions to cancel registration of the same in International Class 34 pursuant to Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3) and Section 2.111 of the Trademark Rules of Practice.

As grounds for this Petition, PM USA alleges that:

1. Petitioner is a Virginia corporation with its principal place of business at 6601 West Broad Street, Richmond, Virginia 23230.
2. On information and belief, Lane Limited ("Respondent" or "Lane") is a New York corporation that lists, in its federal trademark registration, a correspondence address of 1100 Peachtree Street, Suite 2800, Atlanta, GA 30309.

3. Petitioner is the largest tobacco company and cigarette manufacturer in the United States. Petitioner manufactures and sells cigarettes under its well-known VIRGINIA SLIMS® brand.

4. To enhance its rights in the VIRGINIA SLIMS® mark, Petitioner has obtained several federal trademark registrations covering this mark, including Reg. No. 894,450. A copy of the registration certificate for this registration is attached hereto as Exhibit A.

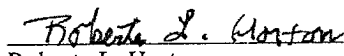
5. On information and belief, Respondent Lane also manufactures and sells tobacco products.

6. On information and belief, Lane Limited has discontinued use of the GOLDEN VIRGINIA mark without an intent to resume use of the mark, and has not manufactured, advertised, sold or distributed any tobacco products or other products under the mark GOLDEN VIRGINIA for at least three consecutive years.

7. Accordingly, Respondent has abandoned any rights that it may have acquired in the mark GOLDEN VIRGINIA within the meaning of 15 U.S.C. § 1127.

WHEREFORE, PM USA states that it is and will be damaged by Registration No. 133,272, and petitions for cancellation thereof.

PHILIP MORRIS USA INC.



Roberta L. Horton
Joanna G. Persio
ARNOLD & PORTER
555 12th Street, N.W.
Washington, D.C. 20004
(202) 942-5000

Attorneys for Petitioner

Date: September 14, 2012

EXHIBIT A

United States Patent Office

894,450
Registered July 14, 1970

PRINCIPAL REGISTER Trademark

Ser. No. 304,382, filed Aug. 5, 1968

VIRGINIA SLIMS

Philip Morris Incorporated (Virginia corporation)
100 Park Ave.
New York, N.Y. 10017

For: CIGARETTES, in CLASS 17 (INT. CL. 34).
First use July 24, 1968; in commerce July 24, 1968.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition to
Cancel has been served on Lane Limited by mailing said copy on September 14, 2012 via
First Class Mail, postage prepaid to the following:

Lane Limited
2280 Mountain Industrial Boulevard
Tucker, Georgia 30084

With a courtesy copy to:

William Brewster, Esq.
Kilpatrick Stockton LLP
1110 Peachtree Street
Suite 2800
Atlanta, GA 30309



Roberta L. Horton
ARNOLD & PORTER
555 12th Street, N.W.
Washington, D.C. 20004
(202) 942-5000

Date: September 14, 2012