

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

MAILED

JAN 20 2002

PAT. & T.M. OFFICE

Paper No. 2

Reg. No. 1,273,671

Cancellation No. 32,725

Richard A. Flynt  
Roylance Abrams Berdo &  
Goodman  
1225 Connecticut Avenue, N.W.  
Suite 315  
Washington, D.C. 20036-2680

J & J Industries, Inc.

v.

Ultima Wallcoverings, Inc.

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

**ANSWER IS DUE FORTY DAYS** after the mailing date hereof.  
(See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

**Discovery and testimony periods are set as follows:**

Discovery period to open:

February 9, 2002

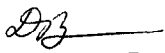
Discovery period to close: August 8, 2002  
30-day testimony period for party  
in position of plaintiff to close: November 6, 2002  
30-day testimony period for party  
in position of defendant to close: January 5, 2003  
15-day rebuttal testimony period  
for plaintiff to close: February 19, 2003

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NOTE:** The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

  
Dwayne Bowling  
Legal Assistant,  
Trademark Trial and  
Appeal Board  
(703) 308-9300 x 171

cc: J.W. Gipple  
Gipple & Hale  
P.O. Box 40513  
Washington, D.C. 20016

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



In the Matter of  
Registration No. 1,273,671

\*

04-25-2001

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #71

J & J INDUSTRIES, INC.

\*

Petitioner

\*

v.

\*

ULTIMA WALLCOVERNGS, INC.

\*

Respondent

\*

**PETITION FOR CANCELLATION**

In the matter of the Registration No. 1,273,671 registered on April 10, 1984 under the Trademark Act of July 5, 1946 in the name of Ultima Wallcoverings Inc., the Petitioner, J & J Industries, believes that it is being and will continue to be damaged by said Registration No. 1,273,671 and hereby petitions the United States Patent and Trademark Office to cancel the Registration pursuant to Section 14 of the Trademark Act of July 5, 1946 (15 U.S.C., Section 1064) and further; Petitioner hereby appoints J.W. Gipple, and the firm of Gipple & Hale, members of the Bar of the Commonwealth of Virginia and/or District of Columbia, whose address is P. O. Box 40513, Washington, D.C. 20016, as its attorneys with full power of substitution and revocation, to prosecute this Petition to Cancel and to transact any and all business connected herewith before the United States Patent and Trademark Office.

Petitioner submits herewith payment in the amount of \$300 as the filing fee.

As grounds for cancellation, Petitioner alleges:

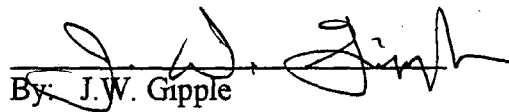
1. That Petitioner is engaged in the business of manufacturing and selling carpeting.
2. In connection with its carpeting, petitioner uses the trademark ULTIMA.
3. The carpeting with which petitioner uses its trademark ULTIMA, is well and favorably known to the trade and to its relevant purchasing public and has generated valuable goodwill and respect.
4. Upon information and belief, Ultima Wallcoverings, Inc., is the current owner of Registration No. 1,273,671.
5. Petitioner's investigation and research indicates that Ultima Wallcoverings Inc. of 15 Akron Road, Toronto, Ontario, Canada is no longer in business.
6. Upon information and belief, registrant has abandoned the mark ULTIMA by discontinuing its use on the goods recited in Registration No. 1,273,671 and has no bona fide intention to resume use of the said mark on the said goods.
7. Upon information and belief, registrant has not used the mark ULTIMA during the three year period preceding the filing date of this petition.
8. If registrant is permitted to continue to maintain the above identified registration, the registration casts a cloud upon petitioner's right to develop its business under its mark ULTIMA.
9. If registrant is permitted to continue to maintain its above identified registration, such registration will be a bar to petitioner's right to register its mark ULTIMA on the Principal Register.

10. Based upon the foregoing, Registration No. 1,273,671 is causing and will continue to cause injury and damage to petitioner.

WHEREFORE, petitioner requests this cancellation be sustained; and that Registration No. 1,273,671 for ULTIMA be canceled under Section 14 (3).

Respectfully submitted,

J & J INDUSTRIES

  
By: J.W. Gipple  
GIPPLE & HALE  
Counsel for Petitioner  
P.O. Box 40513  
Washington, D.C. 20016  
(703) 448-1770 Ext. 302

Date: 4/23/2001

Attorney Ref.: Z-1606

**Certificate of Mailing**

I hereby certify that this paper is being deposited with the U.S. Postal Service, First Class, to the TRADEMARK TRIAL AND APPEAL BOARD, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, this

24<sup>th</sup> day of April, 2001.

Date: 4-24-01

Signature: ATESTA