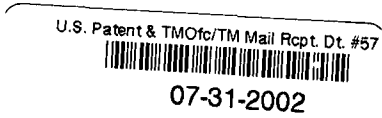


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LDR INDUSTRIES, INC., )  
)  
Petitioner, )  
)  
v. )  
)  
FRANKLIN BRASS MANUFACTURING CO., )  
)  
Respondent. )  
)  
\_\_\_\_\_ )

Cancellation No. 40,392  
Registration No. 2,034,256  
Mark: PRESTIGE



ANSWER TO PETITION TO CANCEL

Respondent, through its attorneys, identified below, answers the Petition to Cancel as follows:

With respect to the first unnumbered paragraph of the Petition to Cancel, Respondent denies that Petitioner will be damaged by Registration No. 2,034,256. Respondent further denies that it is the owner of Registration No. 2,034,256. Respondent admits that its address is 19914 Via Baron, Rancho Dominguez, California 90220. With regard to the remaining allegations of the first unnumbered paragraph, Respondent is without knowledge or information sufficient to form a belief, and therefore denies the remaining allegations of this first unnumbered paragraph.

TRADEMARK TRIAL AND APPEAL BOARD  
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With regard to the allegations of numbered paragraph 1, Respondent is without knowledge or information sufficient to form a belief, and therefore denies such allegations.

2. With regard to the allegations of numbered paragraph 2, Respondent is without knowledge or information sufficient to form a belief, and therefore denies such allegations.

3. With regard to the allegations of numbered paragraph 3, Respondent is without knowledge or information sufficient to form a belief, and therefore denies such allegations.

4. With regard to the allegations of numbered paragraph 4, Respondent is without knowledge or information sufficient to form a belief, and therefore denies such allegations.

5. Respondent denies the allegations of numbered paragraph 5.

6. With regard to the allegations of numbered paragraph 6, Respondent is without knowledge or information sufficient to form a belief, and therefore denies such allegations.

7. Respondent admits that it filed intent-to-use trademark application for the mark PRESTIGE on December 12, 1994, and that the identification of goods presently reads "metal robe hooks" in International Class 6, and "bathroom accessories, namely soap dishes, toothbrush and tumbler holders, toilet paper holders, towel bars and towel rings" in International Class 21, and that this application was assigned Application Serial No. 74/609,485. With regard to the remaining allegations of numbered paragraph 7, Respondent is without knowledge or information sufficient to form a belief, and therefore denies such allegations.

8. Respondent admits that on or before October 15, 1996, it filed a Statement of Use, and that the date of first use in commerce specified in Registration No. 2,034,256 is October 1995, in connection with metal robe hooks and bathroom accessories, namely soap dishes, toothbrush and tumbler holders, toilet paper holders, towel bars and towel rings. With regard to the remaining allegations of numbered paragraph 8, Respondent is without knowledge or information sufficient to form a belief, and therefore denies such allegations.

9. Respondent admits that on January 28, 1997, the U.S. Patent and Trademark Office issued U.S. Registration No. 2,034,256 to it for the Mark in connection with metal robe hooks and bathroom accessories, namely soap dishes, toothbrush and tumbler holders, toilet paper holders, towel bars and towel rings. With regard to the remaining allegations of numbered

paragraph 9, Respondent is without knowledge or information sufficient to form a belief, and therefore denies such allegations.

10. With regard to the allegations of numbered paragraph 10, Respondent denies that it owns Registration No. 2,034,256. Respondent further denies that it owns the PRESTIGE mark. Respondent further denies that it uses the PRESTIGE mark on or in connection with any goods. With regard to the remaining allegations of numbered paragraph 10, Respondent is without knowledge or information sufficient to form a belief, and therefore denies such allegations.

11. With regard to the allegations of numbered paragraph 11, Respondent denies that it owns Registration No. 2,034,256. Respondent further denies that it owns the PRESTIGE mark. Respondent further denies that it uses the PRESTIGE mark on or in connection with any goods. With regard to the remaining allegations of numbered paragraph 11, Respondent is without knowledge or information sufficient to form a belief, and therefore denies such allegations.

12. With regard to the allegations of numbered paragraph 11, Respondent denies that it owns Registration No. 2,034,256. Respondent further denies that it owns the PRESTIGE mark. Respondent further denies that it uses the PRESTIGE mark on or in connection with any goods. Respondent further denies that Petitioner is, has been, or will be damaged by the continued use of the Mark. With regard to the remaining allegations of numbered paragraph 12, Respondent is without knowledge or information sufficient to form a belief, and therefore denies such allegations.

13. With regard to the allegations of numbered paragraph 13, Respondent denies that it owns Registration No. 2,034,256. Respondent further denies that it owns the PRESTIGE mark. Respondent denies that Petitioner would further be damaged if the Registration No. 2,034,256 were to become incontestable.

**Affirmative Defenses**

1. Petitioner has failed to state a claim upon which relief could be granted because Respondent does not own Registration No. 2,034,256, and did not own this registration at the time Petitioner filed the *Petition to Cancel*.

2. If Petitioner has any trademark rights in the designation PRESTIGE, such rights are insufficient to defeat the right to registration of Respondent's successor-in-interest.

3. The Petition to Cancel is barred by waiver.

4. The Petition to Cancel is barred by estoppel.

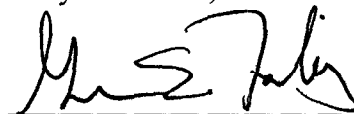
5. The Petition to Cancel is barred by laches.

WHEREFORE, Respondent prays that the Petition to Cancel be dismissed with prejudice.

Respectfully submitted,

Date: July 31, 2002

By:




Glenn E. Forbis  
Michelle L. Visser  
RADER, FISHMAN & GRAUER, PLLC.  
39533 Woodward Avenue, Suite 140  
Bloomfield Hills, Michigan 48304  
(248) 594-0600  
*Attorneys for Respondent*

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service via Express Mail – No. EV064962324US in an envelope addressed to:

Box TTAB  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513.

Date: July 31, 2002


  
\_\_\_\_\_  
Diane R. Lytle

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing *Answer to Petition to Cancel* upon Petitioner by causing a true and correct copy thereof to be sent by first class mail, postage prepaid to:

Richard B. Hoffman  
Beau D. Barberis  
MARSHALL, GERSTEIN & BORUN  
233 S. Wacker Drive  
6300 Sears Tower  
Chicago, IL 60606

Date: July 31, 2002

  
\_\_\_\_\_  
Diane R. Lytle

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