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

Mailed: November 21, 2003

VisioSonic, Ltd.

21939 U.S. 19 North
Clearwater, FL 33765

Cancellation No. 92042651
Reg. No. 2489143

CHARLES E. WEINSTEIN, ESQ.
FOLEY HOAG LLP
155 SEAPORT BOULEVARD
BOSTON, MA 02215

Lenbrook Industries Limited

V.

VisioSonic, Ltd.

Helen Johnson, Legal Assistant

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

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Trademark Rule 2.196 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 affect the rules of practice before the TTAB. *See* Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the

Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open:	December 11, 2003
Discovery period to close:	June 08, 2004
30-day testimony period for party in position of plaintiff to close:	September 06, 2004
30-day testimony period for party in position of defendant to close:	November 05, 2004
15-day rebuttal testimony period for plaintiff to close:	December 20, 2004

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). The notice is 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.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at http://estta.uspto.gov. Images of TTAB proceeding files can be viewed using TTABVue at http://ttabvue.uspto.gov.

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

Lenbrook Industries Limited, Petitioner v. VisioSonic, Ltd., Respondent.	Cancellation No. Registration No. 2,489,143

[redacted]

10-30-2003
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #78

PETITION FOR CANCELLATION

Hon Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

Lenbrook Industries Limited, a Canadian corporation with offices at 633 Granite Court, Pickering, Ontario L1W 3K1, Canada ("Petitioner"), believes that it will be damaged by U.S. Registration No. 2,670,610 for the mark SUBSONIC for "audio speakers and sub-woofers" in International Class 9, and hereby petitions to cancel said registration.

The grounds for this Petition are as follows:

1. From a date long prior to Respondent's registration and its alleged first use date, Petitioner has used the mark SUBSONIC in connection with the manufacture and sale of audio speakers and sub-woofers.

2. Petitioner is the owner of U.S. Trademark Application Serial No. 76/491,162 for registration of the mark SUBSONIC for "speakers and sub-woofers" in International Class 9.

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Said application was filed on February 20, 2003, based upon Petitioner's use of the mark in commerce since at least as early as 1993.

3. The U.S. Patent and Trademark Office has rejected Petitioner's Application Serial No. 76/491,162 on the basis of confusing similarity to Respondent's Registration of SUBSONIC, No. 2,489,143.

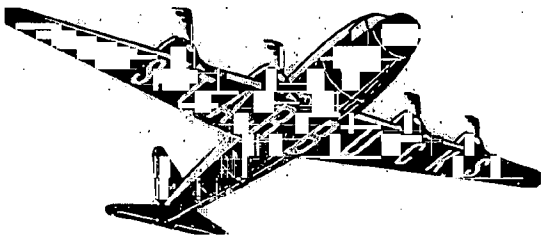
4. Respondent's goods set forth in Registration No. 2,489,143 are closely related to the goods in connection with which Petitioner has used and is using its mark SUBSONIC. In addition, Respondent's goods bearing that mark are offered to the same class of consumers who purchase goods in connection with which Petitioner uses and has used its mark SUBSONIC.

5. The registered mark SUBSONIC so closely resembles Petitioner's mark SUBSONIC as to be likely to cause confusion, mistake and deception as to the source of Registrant's goods, all to Petitioner's damage. Customers and potential customers are likely to form the false belief that Respondent's goods originate from, or are licensed or approved by Petitioner, and dissatisfaction with the goods or services of Respondent will be laid to the blame of Petitioner, all to Petitioner's damage.

6. Petitioner's continued use of its mark SUBSONIC in connection with the promotion and sale of its products would be impaired by the continued registration of Respondent's mark, and Petitioner's ability to obtain a U.S. Registration of its mark will be impaired or destroyed by the existence of Respondent's registration.

5. Each of the foregoing registrations are valid and subsisting and constitute *prima facie* evidence of the validity of the marks and registrations, of Opposers' ownership of and exclusive right to use the marks in commerce, and provide constructive notice of ownership thereof by Opposers.

6. Opposers also own and have used in commerce the common law trademark STARBUCKS and Airplane Design (shown below) since at least as early as March 1996 in connection with coffee stamps and on various signage and advertisements. Opposers have also used this mark in connection with coffee mugs and other merchandise.



7. Opposers have continuously used the STARBUCKS marks in commerce since long prior to the filing date of the opposed application. Opposer's pleaded Registrations in Classes 30 and 32 were also filed and issued well prior to the filing date of the opposed application. Further, Opposers have used the STARBUCKS and Airplane Design mark (shown above) since long prior to the filing date of the opposed application.

8. As a result of Opposers' promotional efforts and commercial success, Opposers' STARBUCKS marks have achieved such widespread public recognition that it has become famous.

9. Opposers' STARBUCKS marks became famous well prior to the filing date of Application Serial No. 76/379,144.

10. Applicant seeks to register the mark STARBROOK AIRLINES & Design in connection with Class 30 and 32 goods that are identical to the goods of Opposers.

11. Applicant's STARBROOK AIRLINES & Design mark so resembles Opposers' Starbucks marks and STARBUCKS and Airplane Design mark as to be likely, when applied to the goods covered by Application Serial No. 76/379,144 to cause confusion, or to cause mistake, or to deceive.

12. In view of the similarities of the parties' marks and the fame of Opposers' STARBUCKS marks, Applicant's mark STARBROOK AIRLINES & Design so closely resembles Opposers' famous marks and name STARBUCKS that it is likely to dilute and will dilute the distinctive quality of Opposers' Starbucks Marks.

WHEREFORE, Opposers believe that they are being, and will be damaged by the registration of the mark shown in Application Serial No. 76/379,144, and request that the opposition be sustained, and that registration to Applicant be refused.

Respectfully Submitted,

Dated: November 12, 2003

By: 

Julia Anne Matheson
Linda K. McLeod
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.
1300 I Street, NW
Washington, DC 20015-3315
Telephone: (202) 408-4000
Facsimile: (202) 408-4400

Attorneys for Opposers

STARBUCKS U.S. BRANDS CORPORATION and STARBUCKS CORPORATION D/B/A STARBUCKS COFFEE COMPANY