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PATENTS • TRADEMARKS • COPYRIGHTS • INTELLECTUAL PROPERTY

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November 2, 2004

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Attn: Trademark Trial & Appeal Board

Re: Petition for Cancellation
Petitioner: Diaster, Inc.
Registrant: Sundiamond USA, Corp.
Registration No.: 2,891,634

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Commissioner of Trademarks, P.O. Box 1451,
Alexandria, VA 22313-1451, on 11-2-04
(Date of Deposit)

Angela Burroughs

Name of Officer

Angela Burroughs

Signature of Officer

11/2/04

Date of Signature

TTAB

Dear MADAM:

Please find attached hereto, in duplicate, a Petition for Cancellation being filed by Petitioner Diaster, Inc. against the above-referenced registration.

Our check No. 56825 in the amount of \$300.00, to cover the filing fee, is attached hereto. Please charge our Deposit Account No. 07-1730 for any insufficiency of funds.

Kindly acknowledge receipt of the Petition for Cancellation and \$300.00 check, by endorsing the self-addressed prepaid postcard which has been attached to the documents, and mailing it to the undersigned.

Very truly yours,

GOTTLIEB, RACKMAN & REISMAN

BHL

Barbara Loewenthal

BHL/ab
encls.

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11-05-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #72

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

In the Matter of Registration No. 2,891,634
For the mark: GEMSTAR
Registered: October 5, 2004
Registrant: Sundiamond USA, Corp.

-----X
DIASTAR, INC. :

Petitioner, : Cancellation No.

v. :

Sundiamond USA, Corp :

Registrant. :
-----X

PETITION FOR CANCELLATION

Diastar, Inc. (hereinafter "Petitioner"), through its attorneys, believing that it has been and will continue to be damaged by the registration of the trademark GEMSTAR of Registration No. 2,891,634 of Sundiamond USA, Corp. (hereinafter "Registrant") registered on October 5, 2004 does allege, on knowledge as to Petitioner otherwise on information and belief as follows:

1. Petitioner, is a corporation organized under the laws of the State of New Jersey with a principal place of business at 6117 Harrison Place, West New York, New Jersey 07093.
2. Registrant, Sundiamond USA, Corp, is a New York corporation, with its principal place of business at 589 Fifth Avenue, Suite 901, New York, NY 10017.

3. Petitioner is the owner of the trademark GEMSTAR for gemstones, jewelry and watches in Class 14. The trademark has been in use in commerce by Petitioner since at least as early as 1987 in connection with the foregoing goods.

4. Petitioner is the owner of the following trademark application, filed with the United States Patent and Trademark Office

MARK	GOODS	FIRST USE	Application Number/Date
GEMSTAR	Gemstones, jewelry and watches in Class 14	1987	Application Serial No.: 76/519,086 filed on May 12, 2003

5. A copy of the USPTO trademark database record evidencing the application for the mark GEMSTAR is annexed as Exhibit "A" and made a part hereof.

6. Registrant is the owner of Federal Trademark Registration No. 2,891,634 for the mark GEMSTAR for diamonds and jewelry. The registration recites a date of first use of June 28, 2002, and the mark was registered on October 5, 2004.

7. In an Office Action of October 24, 2003, the Examining Attorney in the United States Patent and Trademark Office enclosed information with respect to pending application 76/412,885 (now Registration No. 2,891,634) and advised that there may be a likelihood of confusion between the mark in this pending Application and the mark in Application Serial No. 76/519,086.

8. Petitioner has expended considerable amount of time, effort and money in promoting the above-referenced trademark in Application Serial No. 76/519,086 which has become an asset of substantial value and symbol of Petitioner's high quality products, reliability and goodwill.

9. As a result of Petitioner's long, continuous and highly publicized use of the above-referenced trademark in connection with gemstones, jewelry and watches the public has come to associated the trademark GEMSTAR with Petitioner.

10. Prior to the date of first use claimed by Registrant of the mark that is the subject of Registration No. 2,891,634 , Petitioner adopted, used and are still using in commerce its GEMSTAR Mark.

11. The goods in Registrant's Registration No. 2,891,634 are the same as or similar to the goods recited in Petitioner's Application Serial No. 76/519,086.

12. The goods in Registration No. 2,891,634 travel in the same channels of trade as the goods on which Petitioner's Mark in Application Serial No. 76/519,086 travel.

13. Registrant's trademark GEMSTAR in Registration No. 2,891,634 so resembles Petitioner's GEMSTAR Mark and the Mark in Application Serial No. 76/519,086 to be likely, when used on or in connection with the goods recited in Registration No. 2,891,634 to cause confusion, or to cause mistake, or to deceive.

14. For the above reasons, Petitioner has been and will continue to be damaged by the registration of the purported mark GEMSTAR in Registration No. 2,891,634.

WHEREFORE, Petitioner prays that the instant Petition for Cancellation be granted and that the Trademark Trial and Appeal Board cancel Registration No. 2,891,634.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.



Barbara Loewenthal, Esq.
Attorneys for Petitioner
270 Madison Avenue
New York, N.Y. 10016
(212) 684-3900

Dated: 11/9/04
New York, New York

S:\ANGELA\Diastar (Opp 2).wpd

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on 11-2-04
(Date of Deposit)

Angela Burroughs
Name of Certifier

Angela Burroughs
Signature of Certifier

11/2/04
Date of Signature



UNITED STATES PATENT AND TRADEMARK OFFICE

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Record 1 out of 1

Check Status

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark GEMSTAR

Goods and Services IC 014. US 002 027 028 050. G & S: Diamonds and jewelry. FIRST USE: 20020628. FIRST USE IN COMMERCE: 20020628

Mark Drawing Code (1) TYPED DRAWING

Serial Number 76412885

Filing Date May 28, 2002

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition October 21, 2003

Registration Number 2891634

Registration Date October 5, 2004

Owner (REGISTRANT) Sundiamond USA, Corp. CORPORATION NEW YORK 589 Fifth Avenue Suite 901 New York NEW YORK 10017

Attorney of Record David A. Einhorn, Esquire

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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