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

Proceeding	92044455
Party	Defendant Von Schrader Company Von Schrader Company 1600 Junction Avenue Racine, WI 53403
Correspondence Address	Von Schrader Company 1600 Junction Avenue Racine, WI 53403
Submission	Motion to Dismiss - Rule 12(b)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 2,344,023

For: ESPRIT

Registered: April 18, 2000

ESPRIT IP LIMITED,)
Petitioner,)
)
v.) Cancellation No. 92044455
)
VON SCHRADER COMPANY)
Registrant.)

VON SCHRADER COMPANY'S MOTION TO DISMISS
PETITION TO CANCEL AND BRIEF IN SUPPORT THEREOF

NOW COMES registrant, VON SCHRADER COMPANY ("Von Schrader"), and hereby moves the Trademark Trial and Appeal Board ("TTAB") for an Order dismissing the Petition to Cancel filed by Esprit IP Limited, on the basis that such Petition is barred by the applicable statute of limitation. The TTAB lacks subject matter jurisdiction due to the expiration of the statute of limitation.

AS GROUNDS for this motion, Von Schrader asserts the following.

I. FACTS

1. On April 18, 2000, the United States Patent and Trademark Office issued Trademark Registration No. 2,344,023 to Von Schrader Company.

2. On information and belief, the cancellation petition was signed and mailed on behalf of petitioner on April 18, 2005.

II. ARGUMENT

The statute of limitation within which a petition to cancel must be brought is five years. Title 15, United States Code §1064(1) provides: “a petition to cancel a registration of a mark, stating the grounds relied upon, may . . . be filed . . . within five years from the date of the registration of the mark under this Chapter.” (emphasis added) *See also*, TTAB Rule 307.02(a).

As a statute of limitation, the petition must have been filed before the last day of the five year period. *See, Armand’s Systems, Inc. v. Armand’s Subway, Inc.*, 215 USPQ 1048 (TTAB 1982)(“If a properly verified petition is filed with the appropriate fee before the five year anniversary” *Id.* at 1050 (emphasis added)). *See also, Consorzio del Prosciutto di Parma v. Parma Sausage Products, Inc.*, 23 USPQ2d 1894 (TTAB 1992)(“This balancing of property rights in public interest seems to us to have resulted in a statutory scheme whereby, once a trademark owner has had a registration for five years, his property interests come to the fore, and his registration will thenceforth be safe from attack unless he makes the registration vulnerable through his own actions”), McCarthy on Trademarks and Unfair Competition, §20:52.

Once Registrants’ registration became five years old, it became immune to attack pursuant to the statutes. Petitioner’s filing of the petition to cancel on or after the fifth anniversary of Registrant’s registration, Petitioner has deprived the TTAB of the statutory jurisdiction to hear the petition. This case must be dismissed.

Dated this 6th day of June, 2005

Respectfully submitted,
VON SCHRADER COMPANY

By s/Edward R. Antaramian
Edward R. Antaramian (WI Bar #1019160)

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing VON SCHRADER COMPANY'S MOTION TO DISMISS PETITION TO CANCEL AND BRIEF IN SUPPORT THEREOF has been served on counsel for Petitioner by First Class Mail, postage prepaid, this 6th day of June, 2005, addressed as follows:

Lisa Pearson
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By s/Dawn MacDonald-Wolff