

ESTTA Tracking number: **ESTTA36467**

Filing date: **06/22/2005**

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

Proceeding	92044455
Party	Plaintiff Esprit IP Limited ,
Correspondence Address	Lisa Pearson Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017
Submission	Petitioner's Memorandum in Opposition to Registrant's Motion to Dismiss Petition to Cancel
Filer's Name	Evan Gourvitz, Esq.
Filer's e-mail	egourvitz@frosszelnick.com
Signature	/s/ Evan Gourvitz, Esq./
Date	06/22/2005
Attachments	Canc. 92044455.pdf (8 pages)

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

In the Matter of Registration No. 2,344,023
Mark: **ESPRIT**
Petitioner's Ref. No.: ESIP USA TC-02/06961

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ESPRIT IP LIMITED, :
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 Petitioner, :
 : Cancellation No. 92044455
 :
 - against - :
 :
 :
VON SCHRADER COMPANY, :
 :
 :
 Respondent. :
 :
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**PETITIONER'S MEMORANDUM IN OPPOSITION TO
REGISTRANT'S MOTION TO DISMISS PETITION TO CANCEL**

Petitioner Esprit IP Limited ("Esprit" or "Petitioner") hereby submits this memorandum in opposition to Respondent Von Schrader Company's ("Respondent") Motion to Dismiss Esprit's Petition to Cancel.

FACTS

As acknowledged by Respondent (Mot. at 1), Esprit signed and mailed its Petition to Cancel on April 18, 2005, the fifth anniversary of the registration at issue in this proceeding. (*See* Petition to Cancel at 8.) As noted in its Certificate of Express Mailing, the Petition to Cancel was sent to the Patent and Trademark Office by Express Mail, bearing Express Mail mailing label number EV 608124299 US. (*See id.*) According to a printout from the website of the U.S. Postal Service, attached hereto as Exhibit A, the Petition was accepted by the U.S. Postal Service on April 18, 2005 in New York, New York, and arrived on April 19, 2005 Alexandria, Virginia. A copy of the Express Mail mailing label for the Petition, stamped as received by the U.S. Postal Service on April 18, 2005, is attached hereto as Exhibit B.

ARGUMENT

Respondent's motion is frivolous. Indeed, it is expressly contradicted by the very rule, TBMP § 307.02(a), upon which it relies. (Mot. at 2.)

Respondent asserts in its brief that a petition to cancel must be filed before the fifth anniversary of a registration. (*Id.*) This is simply inaccurate. Leaving aside petitions to cancel based on such grounds as fraud or abandonment, which can be brought “[a]t any time,” *e.g.*, 15 U.S.C. §1064(3), it is clear that a petition that must be filed “[w]ithin” five years from the date of registration (*e.g.*, 15 U.S.C. §1064(1)) may be filed on the fifth anniversary of the registration. Indeed, TBMP § 307.02(a) expressly states that “[t]he five-year period specified in Section 14(1), 15 U.S.C. §1064(1) . . . includes the fifth anniversary date of the registration” (emphasis added). *See Strang Corp. v. Stouffer Corp.*, Cancellation No. 18,472, 16 U.S.P.Q.2d 1309, 1310 (T.T.A.B. 1990) (“[f]ive years *from* the date of the registration would include the anniversary date as being within the relevant period. The Patent and Trademark Office has consistently interpreted such statutory references to include the anniversary date of the registration”).

Here, the registration at issue, Reg. No. 2,344,023, was issued on April 18, 2000. Petitioner mailed its petition to cancel on April 18, 2005 – the fifth anniversary date of the registration – by Express Mail in accordance with 37 C.F.R. § 2.198 and TBMP § 111.01. (Exs. A-B; *see* Petition to Cancel at 8.) This means that the Petition to Cancel is treated as if it were filed with the Office on that date. 37 C.F.R. § 2.198; TBMP § 111.01; *see also* TBMP § 307.02(a) (“the ‘Express Mail’ procedure described in 37 C.F.R. § 2.198 [is] available for the filing of a petition to cancel”). Accordingly, Petitioner’s Petition to Cancel is timely and should be considered on its merits. TBMP § 307.02(a); *Strang*, 16 U.S.P.Q.2d at 1310.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that the Board deny Respondent's Motion in its entirety.

Dated: New York, New York
June 22, 2005

Respectfully submitted,

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By: 

Lisa Pearson

Evan Gourvitz

866 United Nations Plaza
New York, New York 10017
(212) 813-5900

Attorneys for Petitioner.

EXHIBIT A



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EXHIBIT B



EV 608124299 US

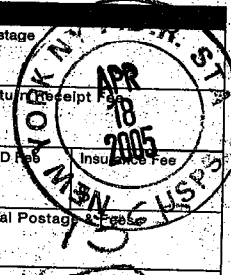
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Date Accepted 4/18/05	Scheduled Date of Delivery Month 4 Day 20	Return Receipt Fee \$	Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
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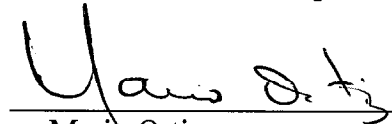
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FOR PICKUP OR TRACKING: Visit www.usps.com or Call 1-800-222-1811

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached Memorandum in Opposition to Registrant's Motion to Dismiss Petition to Cancel was served by prepaid first-class U.S. Mail on June 22, 2005, on Edward R. Antaramian, Esq., Jansson, Shupe & Munger, Ltd., 245 Mail Street, Racine, WI 53405, counsel for Respondent.


Mario Ortiz