

ESTTA Tracking number: **ESTTA113313**

Filing date: **12/06/2006**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Netalog, Inc.		
Entity	Corporation	Citizenship	North Carolina
Address	3871 S. Alston Durham, NC 27713 UNITED STATES		

Attorney information	Vincent K. Gustafson Intellectual Property/Technology Law P.O. Box 14329 Research Triangle Park, NC 27709 UNITED STATES vgustafson@iptl.com Phone:919-419-9350
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Registration Subject to Cancellation

Registration No	2858206	Registration date	06/29/2004
Registrant	HANWOOD INTERNATIONAL LTD. Unit 1520, Metro Ctr 1, 32 Lam Hing St. Kowloon Bay, Kowloon, HONG KONG		
Goods/Services Subject to Cancellation	<p>Class 009. First Use: 2002/12/15 , First Use In Commerce: 2002/12/15 Goods/Services: Radio; radio cassette recorder; radio cassette player; Hi Fidelity Compact Disc player; Hi Fidelity Compact Disc recorder; televisions; video game machines for use with televisions; digital camera; MP3 player; computer parts and accessories, namely computer mouse; audio speakers; multi disc player for compact discs and digital video discs; surveying, electric, photographic, scientific, nautical, lifesaving and teaching apparatus and instruments, namely, photographic cameras, scales, optical scanner; apparatus for recording, transmission or reproduction of sound or images, namely, video cassette player, digital video disc player, video camera; blank magnetic data carriers; recording discs, namely, audio-tape cassettes featuring music; automatic vending machines; calculators; data processors and computers; cable and wireless telephone sets comprising telephone and hands free headset; accessories for cable and wireless telephone sets, namely, battery charger and batteries</p> <p>Class 028. First Use: 2002/11/18 , First Use In Commerce: 2002/11/18 Goods/Services: Games and playthings, namely, board games, card games, dolls; gymnastic and sporting articles, namely baseball bats, bowling balls, exercise trampolines; Christmas tree decorations, inflatable toys; inflatable toy radio</p>		

Attachments	177-Petition to Cancel.PDF (7 pages)(159769 bytes) 177-Certificate of Service.PDF (1 page)(18196 bytes)
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Signature	/vincent k. gustafson/
Name	Vincent K. Gustafson
Date	12/06/2006

AS GROUNDS FOR THIS PETITION, IT IS ALLEGED THAT:

STATEMENT OF FACTS

1. Registrant's U.S. Registration No. 2,858,206 for the mark IBOOMS was registered on June 24, 2004 for (A) the following goods in International Class 9:

Radio; radio cassette recorder; radio cassette player; Hi Fidelity Compact Disc player; Hi Fidelity Compact Disc recorder; televisions; video game machines for use with televisions; digital camera; MP3 player; computer parts and accessories, namely computer mouse; audio speakers; multi disc player for compact discs and digital video discs; surveying, electric, photographic, scientific, nautical, lifesaving and teaching apparatus and instruments, namely, photographic cameras, scales, optical scanner; apparatus for recording, transmission or reproduction of sound or images, namely, video cassette player, digital video disc player, video camera; blank magnetic data carriers; recording discs, namely, audio-tape cassettes featuring music; automatic vending machines; calculators; data processors and computers; cable and wireless telephone sets comprising telephone and hands free headset; accessories for cable and wireless telephone sets, namely, battery charger and batteries;

and for (B) the following goods in International Class 28:

Games and playthings, namely, board games, card games, dolls; gymnastic and sporting articles, namely baseball bats, bowling balls, exercise trampolines; Christmas tree decorations, inflatable toys; inflatable toy radio.

Regarding the goods in International Class 9, Registrant claimed first use in interstate commerce on December 15, 2002.

2. In U.S. Application Serial Number 75/775,048 that matured into U.S. Registration No. 2,858,206, Registrant filed a Statement of Use on January 20, 2004. The Statement of Use stated that the applicant “is using or is using through a related company the mark in commerce on or in connection with ... all goods and/or services as listed in the Notice of Allowance.” The Notice of Allowance (as issued on August 19, 2003) listing all of the goods identified hereinabove. The Statement of Use further included the following declaration:

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

3. U.S. Application Serial Number 75/775,048, which matured into U.S. Registration No. 2,858,206, identified the following person as “Domestic Representative for Foreign Applicant:”

Mr. Yuk Shan Tam
1845 S. Alisar Ave.
Monterey Park, California 91745

Such Domestic Representative is designated as the recipient of Service for Registrant in the “Certificate Of Service By Express Mail” appended hereto.

4. U.S. Registration No. 2,858,206 has not been the subject of any voluntarily amendment by Registrant following its issuance on June 20, 2004.

PETITIONER'S STANDING TO FILE

5. Petitioner is a leading designer, marketer, seller and distributor of a wide range of products and accessories for portable digital devices. A well-known product manufactured by Petitioner is the IBOOM[®] boombox, of which tens of thousands of examples have been sold since 2004 through channels including Petitioner directly and major retailers such as Target Stores, CompUSA, Amazon.com, and others. Petitioner is – and has been for a period of years – highly familiar with commercial channels for several types of goods identified in Registrant's Registration No. 2,858,206 in International Class 9

6. Petitioner owns U.S. Registration No. 3,112,948 issued on July 4, 2006 for the IBOOM mark, and further owns U.S. Application Serial Nos. 78/488,270, 78/919,619, and 78/919,580 for the IBOOM (stylized), IBOOM HOME, and IBOOM TRAVEL marks, respectively. Petitioner's U.S. Registration No. 3,112,948 and U.S. Application Serial No. 78/488,270 (for which the opposition period has closed) were unopposed by Registrant.

7. On November 22, 2006, Petitioner received adverse Office Actions in U.S. Application Serial Nos. 78/919,619 and 78/919,580 in which Registration of the proposed IBOOM HOME and IBOOM TRAVEL marks was refused because of a likelihood of confusion (pursuant to 15 U.S.C. §1052(d)) with the IBOOMS mark in U.S. Registration No. 2,858,206 that is the subject of the present Petition to Cancel.

8. Because registration of Petitioner's U.S. Application Serial Nos. 78/919,619 and 78/919,580 has been refused in view of the subject mark, Petitioner has a real and personal interest in the outcome of any proceeding to cancel U.S. Registration No. 2,858,206 for IBOOMS, and Petitioner has a reasonable basis for its belief in damage.

SPECIFIC GROUNDS ALLEGED FOR CANCELLATION

9. *Scope of Cancellation Sought.* Petitioner seeks to cancel Registration No. 2,858,206 as to both International Classes 9 and 28. Certain goods identified in Registrant's Registration No. 2,858,206 in International Class 9 directly overlap goods identified in Petitioner's Registration No. 3,112,948 and pending Application Nos. 78/488,270, 78/919,619, and 78/919,580. As for the goods in International Class 28 of Registrant's Registration No. 2,858,206, such goods include an "inflatable toy radio," which poses a likelihood of confusion as to the radio products identified in Petitioner's Registration No. 3,112,948 and pending Application Nos. 78/488,270, 78/919,619, and 78/919,580.

10. *First Ground for Cancellation: Fraud.* The first ground alleged for canceling the above-identified registration is fraud. Upon information and belief, Registrant made material misrepresentations of fact in its Statement of Use filed on January 20, 2004, in which Registrant stated that it "is using or is using through a related company the mark in commerce on or in connection with ... all goods and/or services as listed in the Notice of Allowance." Upon information and belief, and based on Petitioner's heightened awareness and knowledge of the commercial channels for several types of goods identified in Class 9 in Registration No. 2,858,206, Petitioner alleges that Registrant was not "using in commerce or ... using through a related company the mark in commerce on or in connection with ... all goods and/or services as listed in the Notice of Allowance," and that Registrant either knew or should have known these facts (e.g., Registrant was either aware of non-use, or willfully failed to verify use, of the IBOOMS mark as to all goods listed in the Notice of Allowance)

at the time the Statement of Use was filed on January 20, 2004. Upon information and belief, Registrant has not made any attempt to voluntarily amend the description of goods of Registration No. 2,858,206 to conform to the commercial use, if any, made by Registrant of the IBOOMS mark.

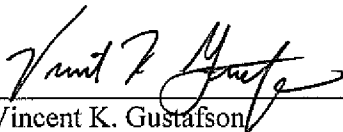
11. *Second Ground for Cancellation: Abandonment.* The second ground alleged for canceling the above-identified registration is abandonment due to non-use. Upon information and belief, Registrant is not currently using the IBOOMS mark in commerce in the United States, and has discontinued use of the mark with intent not to resume such use. Petitioner is – and has been for a period of years – highly familiar with commercial channels for several types of goods identified in Registrant’s Registration No. 2,858,206 in International Class 9, but Petitioner has not seen or heard of any commercial usage by Registrant of the IBOOMS mark. Moreover, Petitioner has performed Internet searches (e.g., using www.google.com) for usages of the IBOOMS mark by Registrant in connection with any of the goods listed in Registrant’s Registration No. 2,858,206, but such searches have been fruitless.

12. *Fees Due and Payable.* Total payment of \$600.00 is authorized herewith via credit card, representing the per-class petition for cancellation fee of \$300.00 specified in 37 C.F.R. 2.6(a)(16) for each of the two classes (*i.e.*, International Classes 9 and 28) of U.S. Registration No. 2,858,206 sought to be cancelled by the present Petition to Cancel.

WHEREFORE, Petitioner prays that Registration No. 2,858,206 be cancelled immediately, and that this Petition for Cancellation be sustained in favor of Petitioner, with costs and legal fees awarded, if appropriate, pursuant to any of the Federal Rules of Civil Procedure, and Title 15, Chapter 22 of the United States Code and any Rules or Regulations of the United States Patent and Trademark Office or Trademark Trial and Appeal Board implementing same.

Dated: December 6, 2006

Respectfully submitted,



Vincent K. Gustafson
Steven J. Hultquist

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Attorneys for Petitioner,
NETALOG, INC.

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

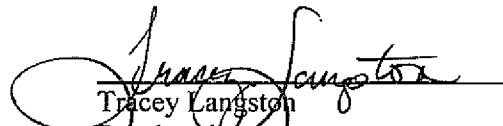
NETALOG, INC.,)	
)	
Opposer)	Registration No. 2,858,206
)	
V.)	Mark: IBOOMS (stylized)
)	
HANWOOD INTERNATIONAL LTD.,)	Date Registered: June 24, 2006
)	
Registrant)	

CERTIFICATE OF SERVICE
BY EXPRESS MAIL

I hereby certify that a true and complete copy of the foregoing **PETITION TO CANCEL** is being served on Registrant HANWOOD INTERNATIONAL LTD. via Domestic Representative correspondent "MR. YUK SHAN TAM" named as "Domestic Representative for Foreign Applicant" in U.S. Application Serial Number 75/775,048 that matured into U.S. Registration No. 2,858,206 by mailing said copy on December 6, 2006 via Express Mail Post Office to Addressee, label number EO 012 479 080 US with postage prepaid to:

Mr. Yuk Shan Tam
1845 S. Alisar Avenue
Monterey Park, California 91755

Dated: December 6, 2006


Tracey Langston
Paralegal