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Filing date: **01/17/2007**

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	Home Decor Products, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	47 Brunswick Avenue Edison, NJ 08817 UNITED STATES		

Attorney information	Michael J. Leonard, Esquire Pepper Hamilton LLP Eighteenth & Arch Streets 3000 Two Logan Square Philadelphia, PA 19103-2799 UNITED STATES leonardm@pepperlaw.com Phone:(215) 981-4547
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**Registration Subject to Cancellation**

Registration No	1384988	Registration date	03/04/1986
Registrant	CIMARRON LUMBER AND SUPPLY COMPANY 4000 MAIN STREET KANSAS CITY, MO 64111 UNITED STATES		
Goods/Services Subject to Cancellation	Class 008. First Use: 1984/08/28 , First Use In Commerce: 1984/08/28 Goods/Services: HAND TOOLS; NAMELY, POST HOLE DIGGERS		
	Class 020. First Use: 1984/08/28 , First Use In Commerce: 1984/08/28 Goods/Services: FURNITURE; NAMELY, LAWN CHAIRS, LOUNGE CHAIRS, TABLES AND UMBRELLAS FOR USE THEREWITH SOLD AS A UNIT		
Grounds for Cancellation	The registered mark has been abandoned.		

Attachments	YARDSTAR petition for cancel (2).pdf ( 7 pages )(169348 bytes )
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Signature	/michael leonard/
Name	Michael J. Leonard, Esquire
Date	01/17/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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_____	:	
Home Decor Products, Inc.,	:	
	:	
Petitioner,	:	U.S. Reg. No. 1,384,988
	:	Mark: YARDSTAR and Design
v.	:	
	:	Cancellation No. _____
Cimarron Lumber and Supply	:	
Company,	:	
	:	
Respondent.	:	
_____	:	

**PETITION FOR CANCELLATION**

HOME DECOR PRODUCTS, INC. (hereinafter "Home Decor Products"), a corporation organized and existing under the laws of the State of Delaware, located and doing business at 47 Brunswick Ave., Edison, NJ 08817 believes that it is or will be damaged by the continued registration of the mark identified above and hereby petitions to cancel the registration.

1. Petitioner, Home Decor Products, is a corporation duly organized and existing under the laws of the State of Delaware, and is located and doing business at 47 Brunswick Ave., Edison, NJ 08817.
2. Petitioner, Home Decor Products, is the owner of U.S. Trademark Application Serial No. 78/637,810 filed May 26, 2005 for the mark YARD STAR.

3. Respondent is the owner (by virtue of two Assignments recorded on December 2, 1986 at Reel 0847, Frame 0633 and Reel 0847, Frame 0634) of Registration No. 1,384,988, issued on March 4, 1986, for the mark YARDSTAR and Design covering goods described as “hand tools, namely, post hole diggers”; and “furniture, namely, lawn chairs, lounge chairs, tables and umbrellas for use therewith sold as a unit” (“Respondent’s Goods”).
4. Registration No. 1,384,988 has been cited as a bar to registration of Petitioner’s Application Serial No. 78/637,810.

**First Ground for Cancellation - Abandonment**

5. Upon information and belief, the YARDSTAR and Design mark of Registration No. 1,384,988 has not been used on or in connection with Respondent’s Goods for at least three years prior to the September 27, 2005 filing of Respondent’s Combined Section 8 & 9 renewal application and is currently not in use in connection with Respondent’s Goods.
6. Upon information and belief, the YARDSTAR and Design mark of Registration No. 1,384,988 has not been used by Respondent in connection with goods described as “hand tools, namely, pole hoe digger” for at least three years prior to the filing date of the instant Petition for Cancellation and is currently not in use on or in connection with the foregoing goods.
7. Upon information and belief, the YARDSTAR and Design mark of Registration No. 1,384,988 has not been used by Respondent in connection with goods described as “furniture, namely, lawn chairs” for at least three years prior to the

filing date of the instant Petition for Cancellation and is currently not in use on or in connection with the foregoing goods.

8. Upon information and belief, the YARDSTAR and Design mark of Registration No. 1,384,988 has not been used by Respondent in connection with goods described as “furniture, namely, lounge chairs” for at least three years prior to the filing date of the instant Petition for Cancellation and is currently not in use on or in connection with the foregoing goods.
9. Upon information and belief, the YARDSTAR and Design mark of Registration No. 1,384,988 has not been used by Respondent in connection with goods described as “furniture, namely, tables” for at least three years prior to the filing date of the instant Petition for Cancellation and is currently not in use on or in connection with the foregoing goods.
10. Upon information and belief, the YARDSTAR and Design mark of Registration No. 1,384,988 has not been used by Respondent in connection with goods described as “furniture, namely, umbrellas” for at least three years prior to the filing date of the instant Petition for Cancellation and is currently not in use on or in connection with the foregoing goods.
11. Respondent’s failure to not use the YARDSTAR and Design Mark on or in connection with Respondent’s Goods for three years prior to the submission of the instant Petition for Cancellation constitutes abandonment.

### **Second Ground for Cancellation – Fraud**

12. Upon information and belief, on September 27, 2005, Respondent filed a false and fraudulent Combined Section 8 (10-year)/Section 9 Declaration/Application wherein it falsely claimed that Respondent was using the YARDSTAR and Design mark in commerce on or in connection with all of the goods listed in Trademark Registration No. 1,384,988.
13. Upon information and belief, the September 27, 2005 Combined Section 8 (10-year)/Section 9 Declaration/Application substantially contained the following statement: “The undersigned being hereby 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 properly 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.”
14. Upon information and belief, on September 27, 2005, Respondent knowingly submitted specimens showing use of the mark YARDSTAR and Design on or in connection with goods described as “mini-barns” or “sheds”, goods not listed or otherwise covered by Registration No. 1,384,988.
15. Upon information and belief, the September 27, 2005 Combined Section 8 (10-year)/Section 9 Declaration/Application stated that the owner of the YARDSTAR and Design mark is using the mark in commerce on or in connection with all

goods listed in the YARDSTAR and Design registration, Trademark Registration No. 1,384,988, which statement was false and fraudulent because the mark was not used in commerce on or in connection with any of the goods listed in the registration.

16. Upon information and belief, the false and fraudulent Combined Section 8 (10-year)/Section 9 Declaration/Application referred to in Paragraph 12 above was allegedly made on the signatory's own knowledge and was not made on information and belief and was made by a person who knew or should have known the same were false and fraudulent.
17. Upon information and belief, the false and fraudulent Combined Section 8 (10-year)/Section 9 Declaration/Application referred to in Paragraph 12 above was made with the intention that the USPTO rely upon the same.
18. Upon information and belief, the USPTO relied on the false and fraudulent Combined Section 8 (10-year)/Section 9 Declaration/Application referred to in Paragraph 12 above when, on November 7, 2005, it accepted the Section 8 Declaration (10-year) and granted the Section 9 Application.
19. Upon information and belief, had the USPTO been aware of the false and fraudulent statements Combined Section 8 (10-year)/Section 9 Declaration/Application referred to in Paragraph 12 above, it would not have accepted the filing of the Section 8 Declaration and would not have granted the Section 9 Application.

20. Upon information and belief, as a result, Respondent has perpetrated a fraud on the USPTO.
21. Upon information and belief, as a result of the fraud perpetrated on the USPTO the YARDSTAR and Design registration sought to be cancelled continues to exist to the detriment of Petitioner.

WHEREFORE, Petitioners pray that this Petition for Cancellation be granted, and Respondent's U.S. Registration No. 1,384,988 for YARDSTAR and Design be canceled.

Petitioners have appointed Vincent V. Carissimi, a member of the Bar of the State of Pennsylvania and Michael J. Leonard, a member of the Bars of the State of Pennsylvania and the District of Columbia, of the law firm of Pepper Hamilton LLP to prosecute this cancellation proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith.

Please address all correspondence to:

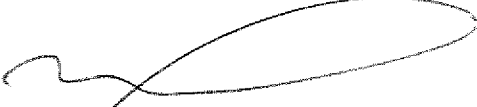
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The filing fee for this Petition to Cancel in the amount of \$600.00 is submitted herewith.

Respectfully submitted,

**HOME DECOR PRODUCTS, INC.**

Date: 17 January 2007 By:



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