

ESTTA Tracking number: **ESTTA129550**

Filing date: **03/13/2007**

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	ThomasL.Marshall		
Entity	Individual	Citizenship	UNITED STATES
Address	2550 Kuhio Avenue, Apt 2505 Honolulu, HI 96815 UNITED STATES		

Attorney information	Christopher J. Day Law Office of Christopher Day 301 East Bethany Home Road, Suite A-213 Phoenix, AZ 85012 UNITED STATES chris@daylawfirm.com Phone:602-258-4440
----------------------	---

Registration Subject to Cancellation

Registration No	2494648	Registration date	10/02/2001
Registrants	SAGGIA, ENRICO Via Zezzos, 9/A TREVISO, ITALY BADO, ALESSANDRO Via del Mozzato, 13 TREVISO, ITALY IEZZI, STEFANO Via Callalta, 90 TREVISO, ITALY		
Goods/Services Subject to Cancellation	Class 018. First Use: 1996/10/22 , First Use In Commerce: 1999/06/08 Goods/Services: handbags, shoulder bags, beach bags, clutch bags, all purpose sports bags, attache cases, school bags, tote bags, travelling bags, credit card cases, document cases, passport cases, cosmetic cases sold empty, keycases, knapsacks, rucksacks, briefcases, purses, wallets, travelling trunks, suitcases, umbrellas, parasols, walking sticks		
	Class 025. First Use: 1996/10/22 , First Use In Commerce: 1999/06/08 Goods/Services: pullovers, gloves, cardigans, jerseys, neckwear, sweaters, socks, tights, trousers, leggings, skirts, jackets, jerkins, shirts, vests, waistcoats, jumpers, track suits, blouses, blousons, jeans, sweat pants, gym suits, knickers, pants, shorts, T-shirts, sweat-shirts, suits and dresses, overcoats, coats, anoraks, raincoats, belts, suspenders, loungewear, underwear, beachwear, sleepwear, footwear, headwear		

Grounds for Cancellation	The registered mark has been abandoned.
	The registration was obtained fraudulently.

Attachments	BROKE Cancellation1.pdf (8 pages)(47109 bytes) BROKE Cancellation2.pdf (9 pages)(414093 bytes)
-------------	---

Signature	/Christopher J . Day/
Name	Christopher J. Day
Date	03/13/2007

Christopher J. Day
The Law Office of Christopher Day
301 East Bethany Home Road, Suite A-213
Phoenix, Arizona 85012
(602) 258-4440

Attorney for Petitioner
Marshall, Thomas L.

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

In the matter of:

Trademark Registration 2494648
Number:

For the mark: BROKE

Date registered: October 2, 2001

Petitioner: Marshall, Thomas L.

Registrant: Kimble Investimentos E Servicos
LDA.

PETITION TO CANCEL

Cancellation No. _____

Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

Petitioner

Petitioner, Thomas L. Marshall, a individual and citizen of the United States with a business address of 2550 Kuhio Avenue, Apt 2505, Honolulu, HI 96815, believes that it is or will be damaged by Registration No. 2494648 and hereby petitions to cancel same.

Registrant

The original application was filed by or on behalf of the following three individuals who were identified as joint applicants:

1. SAGGIA, ENRICO

Address:
SAGGIA, ENRICO
Via Zezzos, 9/A
TREVISO
Italy
Legal Entity Type: Individual
Country of Citizenship: Italy

2. BADO, ALESSANDRO

Address:
BADO, ALESSANDRO
Via del Mozzato, 13
TREVISO
Italy
Legal Entity Type: Individual
Country of Citizenship: Italy

3. IEZZI, STEFANO

Address:
IEZZI, STEFANO
Via Callalta, 90
TREVISO
Italy
Legal Entity Type: Individual
Country of Citizenship: Italy

The USPTO TARR continues to identify the above three individuals as "Registrant." However, on or about February 7, 2007, Registrant recorded an assignment at Reel/Frame No.

003477/0558. Although box 3 of the Recordation Coversheet identifies the assignment as an “Agreement,” a review of the document demonstrates that it is in fact an assignment of the registration (more accurately, an assignment of the underlying application Ser. No. 75505939 filed on June 22, 1998 in classes 18 and 25).

A copy of the Assignment is attached as **Exhibit A**. The Assignment identifies the true owner of the registration as:

KIMBLE INVESTIMENTOS E SERVICOS LDA.
AVENIDA ARRIAGA 77
EDIFICIO MARINA FORUM 6- -SALA 605
FUNCHAL
MADEIRA

A designation of domestic representative was not included. (See Recordation Coversheet, Box 2, included with Exhibit A). Accordingly, Petitioner requests that service of this Petition to Cancel be made on Kimble Investimentos E Servicos LDA at the above address.

Grounds

As grounds of this Petition, it is alleged that:

1. Registrant has abandoned said registered mark by discontinuing use of said mark for a period of more than three (3) consecutive years with no intent to resume said use.
2. Registrant's application for registration was filed on June 22, 1998 and registered on the Principal Register on October 2, 2001 for “handbags, shoulder bags, beach bags, clutch bags, all purpose sports bags, attache cases, school bags, tote bags, travelling bags, credit card cases, document cases, passport cases, cosmetic cases sold empty, keycases, knapsacks, rucksacks, briefcases, purses, wallets, travelling trunks, suitcases, umbrellas, parasols, walking sticks” in International Class 018 and for “pullovers, gloves, cardigans, jerseys, neckwear, sweaters, socks, tights, trousers, leggings, skirts, jackets, jerkins, shirts, vests, waistcoats, jumpers, track suits, blouses, blousons, jeans, sweat pants, gym suits, knickers, pants, shorts,

T-shirts, sweat-shirts, suits and dresses, overcoats, coats, anoraks, raincoats, belts, suspenders, loungewear, underwear, beachwear, sleepwear, footwear, headwear” in International Class 025.

3. The original application identified Enrico Saggia, Alessandro Bado, and Stefano Iezzi as joint applicants (“Applicants”).

4. The original application claimed a 1(b) filing basis.

5. A Notice of Allowance for App. Ser. No. 75505939 was issued on October 12, 1999.

6. The Notice of Allowance identified the goods as:

018-- handbags, shoulder bags, beach bags, clutch bags, all purpose sports bags, attache cases, school bags, tote bags, travelling bags, credit card cases, document cases, passport cases, cosmetic cases sold empty, keycases, knapsacks, rucksacks, briefcases, purses, wallets, travelling trunks, suitcases, umbrellas, parasols, walking sticks

025-- pullovers, gloves, cardigans, jerseys, neckwear, sweaters, socks, tights, trousers, leggings, skirts, jackets, jerkins, shirts, vests, waistcoats, jumpers, track suits, blouses, blousons, jeans, sweat pants, gym suits, knickers, pants, shorts, T-shirts, sweat-shirts, suits and dresses, overcoats, coats, anoraks, raincoats, belts, suspenders, loungewear, underwear, beachwear, sleepwear, footwear, headwear

7. On October 13, 1999—the day after the Notice of Allowance was issued—Applicants executed an assignment of the trademark in favor of a third party, namely Kimble Investimentos E Servicos LDA (“KIMBLE”). A certified copy of the Assignment is included herewith as **Exhibit A**.

8. The assignment stated that “[i]t is in the Sellers’ interest to transfer the aforesaid trademark to a company which can develop and expand the potentiality of the trademark “BROKE” among its licensees, all over the world.”

9. On or about April 6, 2000, Applicants filed a First Request for Extension, stating that “Applicants are believed to be the owners of the mark,” and “Applicants have a continued bona fide intent to use the mark in commerce on the goods identified in the Notice of Allowance.”

The First Request for Extension was purportedly signed on behalf of Applicants by Stefano Iezzi.

10. Because Applicants had previously sold the trademark to KIMBLE, the statements that “Applicants are believed to be the owners of the mark,” and “Applicants have a continued bona fide intent to use the mark in commerce on the goods identified in the Notice of Allowance” were knowingly false. Because these statements were required to obtain the extension of time for filing the statement of use, and because the application would have been deemed abandoned but for these false statements, these false statements were material.

11. On or about October 4, 2000, Applicants filed a second extension request stating that “Applicants are believed to be the owners of the mark” and “Applicants have a continued bona fide intent to use the mark in commerce on the goods identified in the Notice of Allowance” and “Applicants are experiencing difficulties establishing a distribution network for the goods upon which the mark will be used.” The second extension request also contained a declaration that all statements were true. The second extension was signed on behalf of Applicants by Herbert Dubbo as Attorney for Applicants.

12. Because Applicants had previously sold the trademark to KIMBLE, the above-identified statements contained in the second extension request were knowingly false. Because these statements were required to obtain the second extension of time for filing the statement of use, and because the application would have been deemed abandoned but for these false statements, these false statements were material.

13. On or about October 12, 2000, Applicants filed a Statement of Use stating that “Applicant is believed to be the owner of the mark,” “The mark was first used on the goods on 22 October 1996 and was first used in commerce with the United States on 8 June 1999 by applying it to the goods directly, on packaging, labels, and/or to tags attached to the goods,” “The mark is currently used on or in connection with all those goods identified in the Notice of Allowance,” “The mark is currently in use in commerce with the United States or in interstate

commerce.” The Statement of Use also contained a Declaration that “All statements made herein of my own knowledge are true.”

14. Upon information and belief, as of the date of the Statement of Use, the mark was not in use for all the goods identified in the Statement of Use. Therefore the allegation to the contrary in the Statement of Use was knowingly false.

15. Upon information and belief, as of the date of the Statement of Use, the mark was owned by KIMBLE. Therefore the allegation to the contrary in the Statement of Use was knowingly false.


16. Upon information and belief, the above-identified statements contained in the Statement of Use were knowingly false. Because the registration certificate would not have issued but for the above-identified statements, these statements were material.

17. The Assignment executed on October 13, 1999 required the Purchaser to “execute all fulfilments and registrations as required by the Patent and Trademark Offices, as a consequence of the sale of the trademark ‘BROKE’”, but did not include the good will of the business associated with the mark. Accordingly, the Assignment attached as **Exhibit A** is contrary to the provisions of Section 10 of the Lanham Act, rendering the underlying application and resulting registration void.

18. Petitioner is likely to be damaged by continuance of said registration in that Petitioner, on September 9, 2006, filed an application to register BROKE 2 GEAR, Ser. No. 77006168 for “Short-sleeved or long-sleeved t-shirts.” On 02/13/2007, Registrant’s registered mark was cited against Petitioner as a bar to Petitioner’s registration of the mark. Petitioner’s continued and legal use of said mark will be impaired by the continued registration of said abandoned mark of Registrant.

WHEREFORE, Petitioner prays that Registration No. 2494648 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

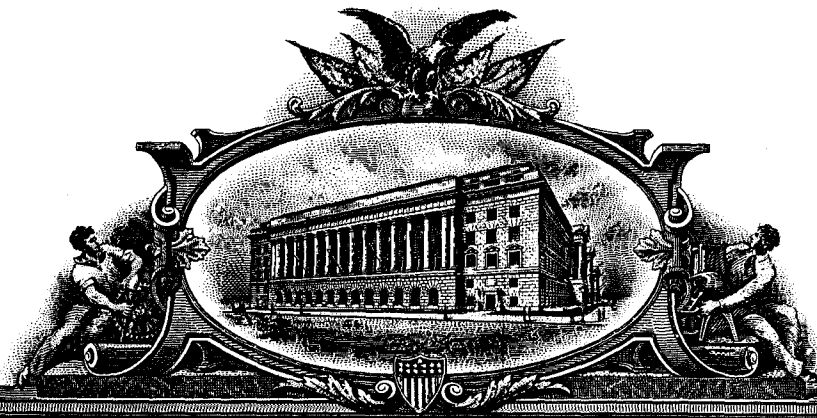
Dated this 12 day of March, 2007.



Christopher J. Day
Attorney for Petitioner
Law Office of Christopher Day
301 East Bethany Home Road, Suite A-213
Phoenix, Arizona 85012
(602) 258-4440 (voice)
(602) 258-4441 (facsimile)

Exhibit A

TS 7054615



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

**UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office**

March 02, 2007

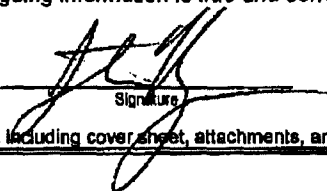
**THIS IS TO CERTIFY THAT ANNEXED IS A TRUE COPY FROM THE
RECORDS OF THIS OFFICE OF A DOCUMENT RECORDED ON
February 7, 2007.**

**By Authority of the
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office**



M. Tarver
M. TARVER
Certifying Officer

4575TM

Form PTO-1594		RECORDATION FORM COVER SHEET TRADEMARKS ONLY		U.S. Department of Commerce Patent and Trademark Office	
To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy(ies) thereof					
1. Name of conveying party(ies): SAGGIA, ENRICO; BADO, ALESSANDRO; IEZZI, STEFANO <input checked="" type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Corporation-State <input type="checkbox"/> Lim-Liab. Company <input type="checkbox"/> Other Additional name(s) of conveying party(ies) attached? No			2. Name and address of receiving party(ies): KIMBLE INVESTIMENTOS E SERVICOS LDA. AVENIDA ARRIAGA 77 EDIFICIO MARINA FORUM 6- -SALA 605 FUNCHAL MADEIRA <input type="checkbox"/> Individual(s) citizenship <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation-State <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Other _____ <small>If assignee is not domiciled in the United States, a domestic representative designation is attached? No Additional name(s) & address(es) attached No</small>		
3. Nature of conveyance: <input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input checked="" type="checkbox"/> Other <u>AGREEMENT</u> Execution Date: 13 October 1999					
4. Application number(s) or registration number(s): A. Trademark Application(s). B: Trademark Registration No(s). 2494648 registered 2 October 2001 for BROKE (stylized) <small>Additional numbers attached? No</small>					
5. Name and address of party to whom correspondence concerning document should be mailed: The Firm of Karl F. Ross P.C. Customer Number 535 5676 Riverdale Avenue Box 900 Riverdale (Bronx), NY 10471-0900 Tel: (718) 884-6600			6. Total number of applications and trademarks involved: <u>1</u> 7. Total fee (37CFR3.41) \$40.00 Enclosed <input checked="" type="checkbox"/> Charge to deposit account 18-2025 <input type="checkbox"/> Charge to credit card (PTO-2038) 8. Charge any deficiency to Deposit account: 18-2025		
Do not use this space					
9. Statement and signature. <i>To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.</i> Jonathan Myers Reg. No. 26,963  7 February 2007 <small>Signature</small> Total number of pages including cover sheet, attachments, and document: <u>8</u>					

CH \$40.00 182025 2494648

700309903

TRADEMARK

REF: 003477 FRAME: 0558

Reg 2,494,648 PAG 03

45.75
TM

(F)

AGREEMENT

Between BADO ALESSANDRO, born on 18/09/1968 in Treviso, Italy, and resident in Treviso, Via Strada del Mozzato n. 13, tax code: BDA LSN 68P18 L407T,

IEZZI STEFANO, born on 20/10/1965 in Treviso, Italy, and resident in Treviso, Via Callalta n. 90, tax code: ZZI SFN 65R20 L407X,

SAGGIA ENRICO, born on 31/01/1967 in Treviso, Italy, and resident in Treviso, Via Zezzos n. 9/A, tax code: SGG NRC 67A31 L407P,

hereinafter also referred to as "the Sellers",

and KIMBLE INVESTIMENTOS E SERVICOS LDA, a company regulated by the law of Madeira, with registered office in Funchal, Avenida Arriaga, setenta e sete, Edificio Marina Forum, primeiro andar, sala cento e tres - Madeira, represented by Luis Mauricio Travassos de Freitas, casado e Jaime Santos Ferreira, hereinafter also referred to as "the Purchaser".

WHEREAS

- a) The Sellers have full title to the trademark "BROKE" and they are free to effect the valid and effective transfer of it, in compliance with all relevant provisions of the applicable law.
- b) The trademark "BROKE" has been registered in the following Countries:
Italy: registration on January 10, 1997; classes 18/25/41;

Alessandro Bado

[Signature]

TRADEMARK

REF: 003477 FRAME: 0559

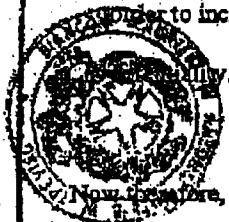
(S)

European Community: registration on December 22, 1997; classes 18/25/41;

U.S.A.: registration on June 22, 1998; classes 18/25



- c) It is in the Sellers' interest to transfer the aforesaid trademark to a company which can develop and expand the potentiality of the trademark "BROKE" among its licensees, all over the world.
- d) The Purchaser wishes to purchase from the Sellers the trademark "BROKE" in order to increase its market share exploiting the trademark and developing its



Nonetheless, in accordance with the foregoing recitals which are an integral part of this Agreement and which are subject to the detailed terms and conditions hereinafter set forth, the Sellers and the Purchaser agree as follows.

Article 1)

Subject to the terms and conditions hereof, the Sellers hereby sell, assign and transfer to the Purchaser, and the Purchaser hereby purchases from the Sellers, the trademark "BROKE".

(S)

Article 2)

The global consideration for the purchase is set at LIT. 75,000,000 (seventy-five million).

Article 3)

The Purchaser shall pay the purchase price of LIT. 75,000,000 (seventy-five million)

Benvenuto Bedo

[Signature]

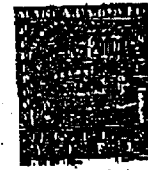
TRADEMARK

REF: 003477 FRAME: 0560

(S)

within and not later than December 31, 2001, to a bank account to be indicated by the Sellers at their own discretion.

Payment shall be made by the Purchaser in one amount or by instalments.



Article 4)

The Sellers commit themselves to give the Purchaser all information, assistance and instructions necessary to manufacture products with the same features of those produced till now by the owners of the mark "BROKE".

Article 5)

The Purchaser shall execute all fulfilments and registrations required by the Patent and Trademark Offices, as a consequence of the sale of the trademark "BROKE".

Article 6)

The expenses related and connected with the execution of this agreement shall be borne by the Purchaser.



Article 7)

All notices, requests and other communications hereunder shall be in writing and shall be sent by recorded delivery postage prepaid or addressed as follows and shall be effective upon receipt:

SAGGIA ENRICO

Via Zazzos n. 9/A

31100 Treviso

Demando Bedo

[Handwritten signature]

TRADEMARK

REF: 003477 FRAME: 0561

(Handwritten mark)

KIMBLE INVESTIMENTOS E SERVICOS-LDA

Funchal, Avenida Arriaga, setenta e sete, Edificio Marina Forum, primeiro andar, sala cento e três - Madeira.

Attention: Luis Mauricio Travassos de Freitas



Article 8)

Whenever any dispute arises out of or relates to this Agreement, its interpretation or breach hereof, then the following procedure shall be applied:

- a. Either party shall immediately notify the other party in writing of the dispute or breach, as the case may be;
- b. If the parties cannot informally resolve the dispute within five (5) business days following the receipt by a party of the notice contemplated in subparagraph (a) above, then the dispute shall be submitted to arbitration, to the exclusion of the courts of law, with the ICC by a sole arbitrator, appointed in accordance with The General Commercial Arbitration Rules in force at the time this Agreement is executed and to which the parties declare they have adhered;
- c. Any such arbitration shall take place in the City of Treviso and shall be conducted in the Italian language. The parties hereto covenant and agree to cooperate in providing information and documentation to the arbitrator on a timely basis and to follow The General Commercial Arbitration Rules in good faith with a view to the speedy resolution of the dispute.

(Handwritten mark)

The parties hereto covenant and agree to use their best efforts to cause the

(Handwritten signature)

(Handwritten signature)

TRADEMARK

REF: 003477 FRAME: 0562

(S)

arbitrator to render its determination within thirty (30) days of the date of submission of the dispute to it;

- d. The decision of the arbitrator with respect to any matter in dispute shall be final and binding upon the parties hereto and shall not be subject to appeal by either party;
- e. Any resolution reached through the award arising out of arbitration (i) shall be limited to a holding for or against a party, and affording such monetary remedy as is deemed equitable, just and within the scope of this Agreement; (ii) may not include special, consequential or punitive damages; and (iii) may be [homologated] in court in accordance with the provisions of the Italian law;
- f. Arbitration shall not be deemed a waiver of any right of termination under this Agreement and the arbitrator is not empowered to act or make any award other than based solely on the rights and obligations of the parties prior to and including such termination;
- g. The arbitrator may not limit, expand or otherwise modify the terms of this Agreement;
- h. Each party shall bear its own expenses incurred in any arbitration or litigation, but any expenses related to the compensation and/or the costs of any arbitrator shall be borne equally by the parties unless the arbitrator determines otherwise;
- i. A request by a party to a court for interim measures necessary to preserve a party's rights and remedies for resolution pursuant to this section shall not be deemed a waiver of the obligation to mediate or agreement to

[Handwritten mark]

[Handwritten signature]

[Handwritten signature]

TRADEMARK

REF: 003477 FRAME: 0563

arbitrate; and

- 1. The parties, their representatives, other participants and the arbitrator shall hold the existence, content and result of arbitration in confidence.

Article 9)



The parties hereby agree that this Agreement shall be construed in accordance with the laws and customs of Italy, as well as the rights and obligations of the parties hereof.

Drafted and signed in Treviso, Italy
 Date : 13/10/1999

The Sellers

BADO ALESSANDRO
 INVESTIMENTOS E SERVICIOS LDA

IEZZI STEFANO

SAGGIA ENRICO

The Purchaser

KIMBLE

[Handwritten signature]

[Handwritten mark]

According to the art. 1341 of the Italian Civil Code, the articles 3), 4) and 8) are hereby separately and expressly approved.

Drafted and signed in Treviso, Italy

Date : 13/10/1999

[Handwritten signature]

[Handwritten signature]

TRADEMARK

REF: 003477 FRAME: 0564

(C)

The Sellers

BADO ALESSANDRO

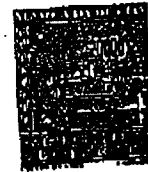
INVESTIMENTOS E SERVICOS LDA

The Purchaser

KIMBLE

IEZZI STEFANO

SAGGIA ENRICO



TRADEMARK

RECORDED: 02/07/2007

REF: 003477 FRAME: 0565