

TTAB

UNITED STATES PATENT AND
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: July 31, 2007

Cancellation No. 92047882
Reg. No. 2881918

75/578, 095

SHELL STORES CORPORATION
1104 53rd Court South
Australian Business Park
Mangonia Park, FL 33407

James A. Frost

V.

SHELL STORES CORPORATION

Susan B. Flohr
Blank Rome LLP
600 New Hampshire Avenue NW
Washington, DC 20037

Janice D. Hyman, Paralegal Specialist:

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available on the TTAB's web page at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper



09-11-2007

submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: 8/20/07

Discovery period to close: 2/16/08

30-day testimony period for party
in position of plaintiff to close: 5/16/08

30-day testimony period for party
in position of defendant to close: 7/15/08

15-day rebuttal testimony period
for plaintiff to close: 8/29/08

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See TBMP § 502.06(a) (2d ed. rev. 2004).

If the parties to this proceeding are (or during the pendency of this proceeding, become) parties to another Board or civil proceeding involving related marks or other common issues of law or fact, they shall notify the Board immediately, so that the Board can consider consolidation or suspension of proceedings, if appropriate.

New Developments at the Trademark Trial and Appeal Board

For faster handling of all papers, the TTAB strongly encourages electronic filing whenever possible. TTAB forms

For electronic filings are available at
<http://estta.uspto.gov>. Images of TTAB proceeding files
can be viewed using TTABvue at <http://ttabvue.uspto.gov>.

ESTTA Tracking number: **ESTTA153651**

Filing date: **07/30/2007**

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 | James A. Frost | | |
| Entity | Individual | Citizenship | UNITED STATES |
| Address | 6861 Mountain View Road Ooltewah, TN 37363 UNITED STATES | | |

| | | | |
|----------------------|--|--|--|
| Attorney information | Susan B. Flohr Blank Rome LLP 600 New Hampshire Avenue NW Washington, DC 20037 UNITED STATES trademarks@blankrome.com, flohr@blankrome.com Phone:202-772-5870 | | |
|----------------------|--|--|--|

Registration Subject to Cancellation

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 2881918 | Registration date | 09/07/2004 |
| Registrant | SHELL STORES CORPORATION 1104 53rd Court South Australian Business Park Mangonia Park, FL 33407 UNITED STATES | | |

Goods/Services Subject to Cancellation

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|--|
| Class 008. First Use: 1999/00/00 First Use In Commerce: 1999/00/00 All goods and services in the class are cancelled, namely: pocket knives, hunting knives, fishing knives and sports knives |
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Grounds for Cancellation

| | |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

Mark Cited by Petitioner as Basis for Cancellation

| | | | |
|----------------------|-----------------------|-----------------------|------------|
| U.S. Application No. | 77108154 | Application Date | 02/15/2007 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | MUSTANG | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 008. First use: | | |

| | |
|--|------------------------|
| | Cutlery, namely knives |
|--|------------------------|

| | |
|-------------|--|
| Attachments | 77108154#TMSN.jpeg (1 page)(bytes) mustang petition.pdf (3 pages)(11326 bytes) |
|-------------|--|

| | |
|-----------|----------------|
| Signature | /sbf/ |
| Name | Susan B. Flohr |
| Date | 07/30/2007 |

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

In the Matter of Registration No. 2881918
Registrant: Shell Stores Corporation
Mark: MUSTANG
Registered: September 7, 2004

: **JAMES A. FROST,** :
: **Petitioner,** :
: **v.** : **Cancellation No.** _____ :
: **SHELL STORES CORPORATION,** :
: **Registrant.** :

PETITION TO CANCEL

James A. Frost, dba Frost Cutlery, a United States citizen, having his principal place of business at 6861 Mountain View Road, Ooltewah, TN 37363 ("Frost"), believes that he will be damaged by Registration No. 2881918, registered September 7, 2004, for the mark MUSTANG for pocket knives, hunting knives, fishing knives and sports knives, in class 8, and hereby petitions to cancel the same. The grounds of the petition are as follows:

1. Long prior to the date on which Registrant can rely, namely, December 31, 1999, the date of first use in commerce alleged in said registration, Petitioner adopted and used his MUSTANG trademark in the United States. Petitioner has used his MUSTANG trademark on knives in commerce since at least as early as since at least as early as December 31, 1994, and

continues to use such mark for said goods.

2. Petitioner's MUSTANG trademark, by virtue of its long term and substantial use since at least as early as December 31, 1994, has acquired great value as an identification of the origin of Petitioner's knives. Through extensive sales and advertising of its goods under the MUSTANG trademark, Petitioner has built up, at significant expense and effort, valuable goodwill, which is likely to be injured by the registration obtained by Registrant to Petitioner's irreparable damage.

4. The trademark MUSTANG covered by the registration herein sought to be cancelled, is identical to Petitioner's previously used trademark MUSTANG, and thus likely to cause confusion, to cause mistake, or to deceive within the meaning of the Trademark Act of 1946, all to Petitioner's irreparable damage and loss of goodwill symbolized by Petitioner's valuable trademark.

5. Petitioner's knives identified by its MUSTANG mark are identical or highly-related to the goods covered by Registrant's Reg. No. 2881918, so that use of the same mark is likely to cause the trade and purchasing public to be confused, mistaken, or deceived into the belief that Registrant's products sold under the MUSTANG mark emanate from or are in some way affiliated with, sponsored or endorsed by Petitioner.

6. Said likelihood of confusion will place a cloud on the Petitioner's title to its valuable MUSTANG trademark.

7. Additionally, Petitioner has no control over the nature and quality of the knives sold or to be sold by Registrant under the MUSTANG trademark, and thus Petitioner's reputation and the goodwill symbolized by the mark to both consumers and the trade would,

therefore, be damaged and the value of its MUSTANG trademark jeopardized, all to Petitioner's irreparable damage.

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained in favor of Petitioner and that Registration No. 2881819 be cancelled.

Respectfully submitted,

By: /sbf/
Susan B. Flohr
Attorneys for Petitioner
BLANK ROME LLP
The Watergate
600 New Hampshire Ave., N.W.
Washington, D.C. 20037
(202) 772-5870
(202) 572-1407 (Facsimile)

Date: July 29, 2007

United States Patent and Trademark Office

Commissioner for Trademarks

P.O. Box 1451

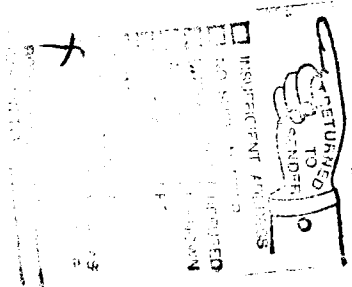
Alexandria, VA, 22313-1451

If Undeliverable Return in Ten Days

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE, \$300

AN EQUAL OPPORTUNITY EMPLOYER



92047882

SHELL STORES CORPORATION
1104 53RD COURT SOUTH
AUSTRALIAN BUSINESS PARK
MANGONIA PARK, FL 33407

