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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	Boot World, Inc.		
Entity	Corporation	Citizenship	California
Address	7270 Trade Street San Diego, CA 92121 UNITED STATES		

Correspondence information	Gordon E. R. Troy, Esq. Attorney Gordon E. R. Troy, PC PO Box 368 Charlotte, VT 05445 UNITED STATES gtroy@webtm.com, usptomail@webtm.com Phone:802 425-9060
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### Registration Subject to Cancellation

Registration No	3018570	Registration date	11/22/2005
Registrant	BERECIBAR, Raul Eduardo #1971 San Jeronimo Cordoba, 5000 ARGENTINA		

### Goods/Services Subject to Cancellation

Class 025. First Use: 1997/10/27 First Use In Commerce: 2004/02/28 All goods and services in the class are cancelled, namely: Shoes, hats, clothing, namely, caps, hoods, winter caps, overalls, gloves, boots, wind resistant jackets and pants, pullovers, jerseys, sweaters, shirts, t-shirts, trousers, socks, underpants, undershirts, all for drivers of motoring, karting and motorcycling
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### Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

### Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77029991	Application Date	10/26/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	KM SHOES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2003/04/01 First Use In Commerce: 2003/04/01 Retail outlets featuring clothing, footwear, kitchen tools and related items; Retail services by direct solicitation by sales agents in the field of clothing, footwear, kitchen tools and related items; Retail stores featuring clothing, footwear, kitchen tools and related items

Attachments	77029991#TMSN.jpeg ( 1 page )( bytes ) 6055042.PDF ( 5 pages )(90928 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Gordon E. R. Troy/
Name	Gordon E. R. Troy, Esq.
Date	04/01/2008

**United States Patent and Trademark Office  
Trademark Trial and Appeal Board**

Our Ref: 1911-005.001

In re Trademark  
Registration No. 3018570  
Trademark: KM RACELINE and Design

<p style="text-align: center;">Boot World, Inc.  Petitioner  v.  Raul Eduardo Bercibar  Registrant</p>	<p><b>PETITION FOR CANCELLATION</b></p>
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Plaintiff/Petitioner, Boot World, Inc. (hereinafter “Petitioner”), a corporation organized and existing under the laws of the State of California, with a business address of 7270 Trade Street, San Diego, CA 92121, believes it will be damaged by the continuing registration of the mark shown in Registration No. 3018570 (the “Registration”).

As grounds for its petition, Petitioner alleges the following:

1. To the best of Petitioner’s knowledge, the name and address of the Defendant/Registrant of Registration No. 3018570 is Raul Eduardo Bercibar, an individual citizen of Argentina (hereinafter “Registrant”) #1971 San Jeronimo, Cordoba 5000, Argentina.

2. The official records of the Trademark Office includes a correspondent for the Registration and also includes a Domestic Representative, however, there is no physical address listed for the Domestic Representative.

3. Petitioner filed an application to register its mark KM SHOES on October 26, 2006, which was assigned serial no. 77029991 and the services recited in the application are “Retail outlets featuring clothing, footwear, kitchen tools and related items; Retail services by direct solicitation by sales agents in the field of clothing, footwear, kitchen tools and related items; Retail stores featuring clothing, footwear, kitchen tools and related items” claiming a date of first use by Petitioner of April 1, 2003 (“Petitioner’s Application”).

4. Petitioner acquired the business of KM SHOES from its predecessor in interest on April 1, 2003, and pursuant to investigations recently conducted, Petitioner has determined that the mark KM SHOES was first used by its predecessor in commerce at least as early as January 2000.

5. Petitioner has used its mark KM SHOES in commerce throughout the United States continuously since April 1, 2003.

6. Petitioner’s Application has been examined by the Trademark Office, and the Registration has been cited in anticipation to registration on the basis of confusing similarity under Section 2(d) of the Trademark Act (15 U.S.C. §1052).

7. Registrant claims a date of first use in commerce of its mark KM RACELINE and Design of February 28, 2004. Registrant filed its intent to use trademark application for its mark KM RACELINE and Design on December 24, 2003, and

amended its application on September 24, 2005 by claiming use of its mark in commerce of February 28, 2004 through the filing of a Statement of Use.

8. Upon information and belief, Petitioner alleges that the mark represented by the Registration was first used in commerce after Petitioner's first use in commerce of its mark KM SHOES.

9. Upon information and belief, Petitioner alleges that the mark represented by the Registration was filed as an intent to use application on December 24, 2003 which is after Petitioner's first use in commerce of its mark KM SHOES.

10. The Trademark Office has determined in Petitioner's Application that Petitioner's mark KM SHOES and Defendant's KM RACELINE and Design mark cannot coexist in the marketplace or on the register.

11. Petitioner has priority of right to use and register its mark KM SHOES over Registration No. 3018570 for KM RACELINE and Design by virtue of its use of its mark in interstate commerce prior to Registrant's filing of an intent to use application for its mark.

12. Petitioner timely brings this action pursuant to the provisions of Sections 14 & 15 of the Trademark Act. 15 U.S.C. §§ 1064 & 1065.

13. For the aforesaid reasons, Petitioner will be damaged by the continuing registration of the mark shown in Registration No. 3018570. Petitioner accordingly demonstrates it has standing to make this petition.

14. Upon information and belief, and after investigations conducted, Petitioner has not been able to locate any use of the mark represented by the Registration in the United States.

15. Upon information and belief, the claims of first use made in the Registration may have been false, and accordingly Registrant was not entitled to register its mark because the mark KM RACELINE and Design was not in lawful use in commerce in or with the United States at the time of making the declaration.

16. Upon information and belief, the mark represented by the Registration has been abandoned.

17. Upon information and belief, the mark represented by the Registration has not been in use for more than three years, constituting prima facie abandonment.

WHEREFORE, Petitioner prays, for the aforesaid averments that the Trademark Trial and Appeal Board grant its petition to cancel Registration No. 3018570.

#### **FIRST CLASS MAILING CERTIFICATION**

Date of Deposit : April 1, 2008

I hereby certify that this Petition for Cancellation is being deposited with the United States Postal Service First Class Mail on the date indicated above and is addressed to each of the following:

Raul Eduardo Brecibar  
#1971 San Jeronimo  
Cordoba 5000  
Argentina

Henri Misrahi  
# 1804  
4000 Williams Island Blvd.  
Aventura, Florida 33160

Jose A. Urizar Anasagasti  
C/O Henri Misrahi  
# 1804  
4000 Williams Island Blvd.  
Aventura, Florida 33160

Respectfully submitted:  
GORDON E. R. TROY, PC

By: \_\_\_\_\_  
Gordon E. R. Troy  
*Attorney for Petitioner*  
PO Box 368  
Charlotte, VT 05445  
(802) 425-9060 Phone  
(802) 425-9061 Fax  
[gtroy@webtm.com](mailto:gtroy@webtm.com) EMail