

ESTTA Tracking number: **ESTTA295667**

Filing date: **07/16/2009**

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	The Yankee Candle Company, Inc.		
Entity	Corporation	Citizenship	Massachusetts
Address	P.O. Box 110 South Deerfield, MA 01373 UNITED STATES		

Attorney information	Michael J. Bevilacqua, Esq. Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street Boston, MA 02109 UNITED STATES michael.bevilacqua@wilmerhale.com Phone:(617) 526-6448		
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Registrations Subject to Cancellation

Registration No	3619918	Registration date	05/12/2009
Registrant	Gaines Group Suite A-100 2901 W. Sam Houston Pkwy. Houston, TX 77043 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2008/07/07 First Use In Commerce: 2008/07/07 All goods and services in the class are cancelled, namely: Room deodorants; Room fresheners

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	3513358	Registration date	10/07/2008
Registrant	Gaines Group Suite A-100 2901 W. Sam Houston Pkwy. Houston, TX 77043 UNITED STATES		

Goods/Services Subject to Cancellation

Class 004. First Use: 2008/07/07 First Use In Commerce: 2008/07/07 All goods and services in the class are cancelled, namely: Candles; Candles for lighting; Perfumed candles; Scented candles

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)		
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2171331	Application Date	06/23/1997
Registration Date	07/07/1998	Foreign Priority Date	NONE
Word Mark	HOME SWEET HOME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 004. First use: First Use: 1988/01/11 First Use In Commerce: 1988/01/11 candles and fragrant wax for use in potpourri burners		

U.S. Registration No.	3050821	Application Date	02/03/2005
Registration Date	01/24/2006	Foreign Priority Date	NONE
Word Mark	HOME SWEET HOME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2000/07/13 First Use In Commerce: 2000/07/13 air fresheners		

U.S. Registration No.	3050817	Application Date	02/03/2005
Registration Date	01/24/2006	Foreign Priority Date	NONE
Word Mark	HOME SWEET HOME		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 011. First use: First Use: 2003/06/19 First Use In Commerce: 2003/06/19 electric fragrance dispensers

Attachments	78560250#TMSN.jpeg (1 page)(bytes) 78560236#TMSN.jpeg (1 page)(bytes) HOME SCENT HOME cancellation.PDF (5 pages)(230116 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	/barbara a. barakat/
Name	Barbara A. Barakat, Esq.
Date	07/16/2009

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

In the matter of Registration Nos. 3,619,918 and 3,513,358

Dates of Issue: May 12, 2009 and October 7, 2008

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The Yankee Candle Company, Inc.,)	
)	
Petitioner)	
)	
v.)	Cancellation No.
)	
Gaines Group,)	
)	
Registrant)	
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BOX TTAB/FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

PETITION FOR CANCELLATION

The Yankee Candle Company, Inc., a corporation organized and existing under the laws of Massachusetts, located and doing business at P.O. Box 110, South Deerfield, Massachusetts 01373, believes that it will be damaged by Registration Nos. 3,619,918 and 3,513,358 for the mark "HOME SCENT HOME" covering, respectively, room deodorants and room fresheners in class 5 and candles, candles for lighting perfumed candles and scented candles in class 4, and hereby petitions to cancel the registrations of the mark "HOME SCENT HOME" for these goods.

As grounds therefor, it is alleged that:

1. Petitioner is now, and has been for some time, engaged in the sale of candles, candle accessories, home fragrance products and personal care products, through its own stores, independent stores, mail order catalogues and its website.

2. Petitioner adopted the mark "HOME SWEET HOME" in connection with candles and fragrant wax for use in potpourri burners, and began using the mark in interstate commerce in connection with those products at least as early as January 11, 1988. Such use has been valid and continuous since the date of first use and has not been abandoned.

3. Petitioner adopted the mark "HOME SWEET HOME" in connection with air fresheners, and began using the mark in interstate commerce in connection with those products at least as early as July 13, 2000. Such use has been valid and continuous since the date of first use and has not been abandoned.

4. Petitioner adopted the mark "HOME SWEET HOME" in connection with electric fragrance dispensers, and began using the mark in interstate commerce in connection with those products at least as early as June 19, 2003. Such use has been valid and continuous since the date of first use and has not been abandoned.

5. Petitioner is the owner of United States Trademark Reg. No. 2,171,331, issued July 7, 1998, for the mark HOME SWEET HOME in connection with candles and fragrant wax for use in potpourri burners.

6. Petitioner is also the owner of United States Trademark Reg. No. 3,050,821, issued January 24, 2006, for the mark HOME SWEET HOME, in connection with air fresheners.

7. Petitioner is also the owner of United States Trademark Reg. No. 3,050,817, issued January 24, 2006, for the mark HOME SWEET HOME in connection with electric fragrance dispensers.

8. Registration No. 3,619,918, sought to be canceled for the trademark “HOME SCENT HOME,” registered for use in connection with room deodorants; room fresheners. The date of first use claimed by the Registrant is July 7, 2008.

9. Registration No. 3,513,358, sought to be canceled for the trademark “HOME SCENT HOME,” registered for use in connection with candles, candles for lighting, perfumed candles, scented candles. The date of first use claimed by the Registrant is July 7, 2008.

10. Petitioner’s trademark “HOME SWEET HOME” and Registrant’s trademark “HOME SCENT HOME” are confusingly similar.

11. Both Petitioner’s trademark “HOME SWEET HOME” and Registrant’s trademark “HOME SCENT HOME” comprise 3 words, the first and last of which 3 words are “HOME” and the middle word comprises a one syllable term that begins with the letter S and ends with the letter “T.” Accordingly, Petitioner’s and Registrant’s trademarks are confusingly similar in appearance and sound and present a confusingly similar commercial impression.

12. Registrant’s claimed goods are identical to the goods of the Petitioner and will travel in the same channels of trade to the same potential purchasers.

13. Petitioner began to use its mark in 1988, long before the date of first use of the Registrant, July 7, 2008.

14. Petitioner’s trademark “HOME SWEET HOME” is symbolic of the extensive goodwill and recognition built up by Petitioner through continuous use of said mark over a substantial period of time.

15. Petitioner has expended considerable effort and expense in promoting its trademark “HOME SWEET HOME” and the goods provided under such mark, with the result

that the purchasing public has come to know, rely upon, and recognize the goods of Petitioner by such mark. Petitioner has an exceedingly valuable goodwill established in its mark.

16. If the Registrant is permitted to retain the registrations sought to be canceled, and thereby, the prima facie exclusive right to use in commerce the mark "HOME SCENT HOME" on goods identical and closely related to the goods provided by Petitioner, Petitioner's mark, and the goodwill established in its mark, will be diluted.

17. If the Registrant is permitted to retain the registrations sought to be canceled, and thereby, the prima facie exclusive right to use in commerce the mark "HOME SCENT HOME" on goods identical and closely related to the goods provided by Petitioner, confusion in trade is likely to result from any concurrent use of Petitioner's mark and that of the Registrant, all to the great detriment of Petitioner, who has expended considerable sums and efforts in promoting its mark and goods.

18. Purchasers are likely to consider the goods of the Registrant sold under the mark "HOME SCENT HOME" as emanating from Petitioner.

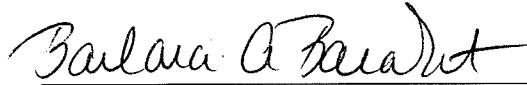
19. Concurrent use of the marks by Registrant and the Petitioner may result in irreparable damage to Petitioner's reputation and goodwill, if the goods provided by the Registrant are inferior, since purchasers are likely to attribute the source of the Registrant's goods to the Petitioner.

20. If the Registrant is permitted to retain the registrations sought to be canceled, a cloud will be placed on Petitioner's title in and to its trademark "HOME SWEET HOME" and on its right to enjoy the free and exclusive use thereof in connection with the provision of its goods, all to the great injury of Petitioner.

WHEREFORE, Petitioner deems that it is and will be damaged by Registration Nos. 3,619,918 and 3,513,358, and petitions for cancellation thereof.

Respectfully submitted,

THE YANKEE CANDLE COMPANY, INC.



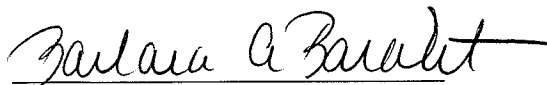
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Barbara A. Barakat
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Attorneys for Petitioner

Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
(617) 526-6154
July 16, 2009

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition to Cancel was served by first-class mail, postage-prepaid, this 17th day of July, 2009, upon:

Gaines Group
800 Gessner Road, Suite 200
Houston, Texas 77024-4256



Barbara A. Barakat