

ESTTA Tracking number: **ESTTA301385**

Filing date: **08/17/2009**

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	Kel-San, Inc.		
Entity	Corporation	Citizenship	Tennessee
Address	5109 National Drive Knoxville, TN 37914 UNITED STATES		

Attorney information	Robert O. Fox Luedeka, Neely & Graham, PC PO Box 1871 Knoxville, TN 37901 UNITED STATES rfox@lng-patent.com, gkressin@lng-patent.com, mgraham@lng-patent.com Phone:865.546.4305
----------------------	---

Registration Subject to Cancellation

Registration No	2882547	Registration date	09/07/2004
Registrant	Waste Management, Inc. 1001 Fannin, Suite 4000 Houston, TX 77002 UNITED STATES		

Goods/Services Subject to Cancellation

Class 037. First Use: 2004/05/24 First Use In Commerce: 2004/05/24 All goods and services in the class are cancelled, namely: Waste disposal for others, collection of trash, and collection of cans and bottles for recycling
Class 039. First Use: 2004/05/24 First Use In Commerce: 2004/05/24 All goods and services in the class are cancelled, namely: Garbage collection
Class 040. First Use: 2004/05/24 First Use In Commerce: 2004/05/24 All goods and services in the class are cancelled, namely: Recycling and waste treatment services

Grounds for Cancellation

The mark comprises matter that, as a whole, is functional	Trademark Act section 2(e)(5)
Genericness	Trademark Act section 23
The mark is merely descriptive	Trademark Act section 2(e)(1)
Other	Registration is void ab initio; terminology does not indicate source

Attachments	6526601-pleadings-20090817-PetitionToCancel.pdf (4 pages)(237260 bytes)
-------------	--

	cos.pdf (1 page)(73495 bytes)
--	----------------------------------

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	/robertofox/
Name	Robert O. Fox
Date	08/17/2009

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

In the Matter of U.S. Registration No. 2,882,547
For the mark: THINK GREEN

KEL-SAN, INC.)
)
Petitioner,)
)
v.)
)
WASTE MANAGEMENT, INC.)
)
Respondent.)

PETITION TO CANCEL

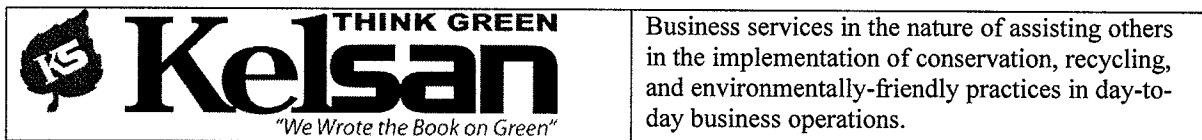
TRADEMARK TRIAL AND APPEAL BOARD
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Sir:

Petitioner, Kel-San, Inc., believes it is being damaged by registration of the mark of United States Registration No. 2,882,547, and hereby petitions to cancel said Registration on the following grounds:

1. Petitioner is a corporation of Tennessee engaged in the business of, among other things, manufacturing, packaging, distributing and/or selling a range of cleaning, maintenance, and packaging products, supplies, and services.
2. Petitioner has used and is using the terminology "Think Green" in reference to its corporate emphasis on and commitment to strategies of conservation of resources, recycling, and related environmentally-friendly practices (hereinafter "Petitioner's Activities").

3. On information and belief, many thousands of other businesses, institutions, and organizations in the U.S. publicly use the terminology "Think Green" or substantially the same phrase for the same or virtually the same message and activities as those of Petitioner communicated via various electronic and/or print media to their particular industries, customer bases, and the public at large as part of a concerted effort to encourage and promote responsible and efficient utilization of natural and other resources for the overall betterment and advancement of society and the general public welfare. Accordingly, Petitioner's use of the terminology "Think Green" for and in connection with Petitioner's Activities is believed to be part of an expanding ground swell of voluntary business and individual involvement toward improvement of the overall human condition and prospects for future security and sustainable economic prosperity for businesses and individuals by activities which make and promote more efficient use of natural resources by, among other things, conservation, recycling, and reduced waste/underutilization of materials.
4. Petitioner is the owner of U.S. Trademark Registration No. 3,485,925 summarized below:



5. On information and belief, Respondent Waste Management, Inc. is organized under the laws of Delaware, and is the owner of record of U.S. Registration No. 2,882,547 for the terminology "Think Green" for waste disposal for others, collection of trash, and collection of cans and bottles for recycle, (hereinafter "Respondent's Services").
6. Respondent has alleged that Petitioner's use of the terminology "Think Green" alone and as part of other words, letters, signs and/or symbols including, but not limited to, in the mark of Petitioner's '925 registration for or in connection with Petitioner's Services and/or the services set forth in the '925 registration creates a likelihood of confusion with respect to the subject matter of the '547 Registration said to be owned by Respondent.

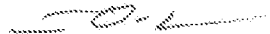
7. To the extent there is or may be an existing likelihood of confusion between Petitioner's use of the terminology "Think Green" for or in connection with at least part or all of the services of the aforesaid '925 registration or of any of Petitioner's Services and use of the terminology "Think Green" of the '547 registration by Respondent for Respondent's Services, Petitioner believes it is and will continue to be damaged by continued registration of the same.
8. On information and belief, the subject matter of the '547 registration was merely descriptive and lacked secondary meaning in relation to the services set forth therein at the time the underlying application was filed and/or, as of the present time, the subject matter of the '547 registration is or has become merely descriptive and utterly lacking of secondary meaning in relation to the services set forth therein.
9. On information and belief, the subject matter of the '547 registration is or has become generic of the services of the '547 registration.
10. On information and belief, the subject matter of the '547 registration was not in use in commerce at the time of the filing of the underlying application for all the services set forth in the '547 registration and said registration , as a result, is and was invalid and/or unenforceable and therefore void *ab initio*.
11. On information and belief, the subject matter of the '547 registration is unregistrable under 15 U.S.C. § 1127 for the reason, among other things, that it does not identify and distinguish the services set forth therein from those manufactured or sold by others and/or does not indicate a source thereof.
12. On information and believe, the subject matter of the '547 registration is unregistrable under 15 U.S.C. § 1052 for the reason, among other things, that the subject matter is, as a whole, functional in relation to the services thereof and/or it does not function to indicate a source of such goods or services.
13. The '547 registration issued on September 7, 2004, and is therefore subject to cancellation under at least 15 U.S. C. § 1064, upon at least the grounds stated herein, by any person including, but not limited to, Petitioner, who believes he is or will be damaged by the continued existence of the registration.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Petition to Cancel has been mailed to the following by depositing same in the U.S. Mail, first class postage prepaid, this the 17th day of August, 2009.

Jason P. Sander, Esq.
Greenberg Traurig LLP
1000 Louisiana Street, Suite 1700
Houston, TX 77002

Waste Management, Inc.
1001 Fannin, Suite 4000
Houston, TX 77002



Robert O. Fox
Attorney for Opposer