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Filing date: **04/06/2011**

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	Sears Brands, LLC		
Entity	limited liability company	Citizenship	Illinois
Address	3333 Beverly Road Hoffman Estates, IL 60179 UNITED STATES		

Attorney information	Jeffrey P. Dunning Greenberg Traurig, LLP 77 W. Wacker Drive Suite 3100 Chicago, IL 60601 UNITED STATES chiipmail@gtlaw.com, galism@gtlaw.com, dunningj@gtlaw.com, benderr@gtlaw.com Phone:312.456.8400
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Registration Subject to Cancellation

Registration No	3104379	Registration date	06/13/2006
Registrant	GIANCROCE, ROBERT 2167 FOREST VIEW ROAD AIKEN, SC 29803 UNITED STATES		

Goods/Services Subject to Cancellation

Class 036. First Use: 2005/10/30 First Use In Commerce: 2005/10/30 All goods and services in the class are cancelled, namely: Underwriting warranty programs in the fields of heating, ventilation and air conditioning systems
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Grounds for Cancellation

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

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77843134	Application Date	10/07/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SMART PLAN		

Design Mark	SMART PLAN
Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 1996/11/01 First Use In Commerce: 1996/11/01 Extended warranty services, namely, service contracts that provide for the repair and/or replacement of appliances and parts thereof that incur electrical or mechanical failure

U.S. Application No.	85144984	Application Date	10/05/2010
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	SMART PLAN
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Design Mark	SMART PLAN
Description of Mark	NONE
Goods/Services	Class 036. First use: Extended warranty services, namely, service contracts; providing extended warranties on consumer electronic products, major and small appliances, jewelry and watches, sporting goods, toys, health and beauty products, lawn and garden equipment, outdoor power equipment, floorcare equipment, power tools, home improvement products, automotive parts and accessories, heaters, fans, paper shredders, baby monitors and seasonal decorations

Attachments	77843134#TMSN.jpeg (1 page)(bytes) 85144984#TMSN.jpeg (1 page)(bytes) smartplan.pdf (6 pages)(139730 bytes) smartplanexhibit1.pdf (2 pages)(86401 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	/Jeffrey P. Dunning/
Name	Jeffrey P. Dunning
Date	04/06/2011

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

In the Matter of Trademark Registration No. 3,104,379
Registered June 13, 2006

SEARS BRANDS, LLC,)	
)	
Petitioner,)	Cancellation No.
)	
v.)	
)	
ROBERT GIANCROCE,)	
)	
Registrant,)	

PETITION FOR CANCELLATION

Petitioner SEARS BRANDS, LLC (“Sears Brands”), an Illinois limited liability company, having a business address of 3333 Beverly Road, Hoffman Estates, Illinois 60179 (“Petitioner”) believes that it will be damaged by U.S. Registration No. 3,104,379, and hereby petitions to cancel that registration. As grounds for cancellation, it is alleged that:

1. Sears Brands, through its affiliated retail and online stores, is the nation’s leading home appliance retailer, as well as a leading retailer in the fields of tools, lawn and garden, apparel, consumer electronics and automotive repair and maintenance. Sears Brands’ well-known brands include Kmart, Kenmore, Craftsman, DieHard, Lands' End, Jaclyn Smith, Joe Boxer, Apostrophe and Covington.

2. Sears Brands, through its affiliated companies, is the nation's largest provider of home services, with more than 11 million service calls made annually.

3. Through its predecessors in interest and related companies, Sears Brands has used the SMART PLAN mark in commerce throughout the United States since at least as early as

1996, in association with providing extended warranty services for appliances and other products.

4. As a result of Sears Brands' continuous use of its SMART PLAN mark in commerce since 1996, Sears Brands has acquired exclusive, nationwide rights in the SMART PLAN mark under common law.

5. Sears Brands' SMART PLAN mark is inherently distinctive or, in the alternative, has acquired distinctiveness through Sears Brands' extensive, continuous use and promotion of that mark in commerce since at least 1996.

6. On October 7, 2009, Sears Brands filed an application to register the mark SMART PLAN for "extended warranty services, namely, service contracts that provide for the repair and/or replacement of appliances and parts thereof that incur electrical or mechanical failure," in International Class 36, which has been assigned U.S. Serial No. 77/843,134.

7. On October 5, 2010, Sears Brands filed an application to register the mark SMART PLAN for "extended warranty services, namely, service contracts; providing extended warranties on consumer electronic products, major and small appliances, jewelry and watches, sporting goods, toys, health and beauty products, lawn and garden equipment, outdoor power equipment, floorcare equipment, power tools, home improvement products, automotive parts and accessories, heaters, fans, paper shredders, baby monitors and seasonal decorations," in International Class 36, which has been assigned U.S. Serial No. 85/144,984.

8. Both of Sears Brands' aforementioned applications (U.S. Serial Nos. 77/843,134 and 85/144,984) have been refused registration by the United States Patent and Trademark Office under §2(d) of the Trademark Act, 15 U.S.C. §1052(d), based on prior U.S. Registration No. 3,104,379.

9. Upon information and belief, Registrant Robert Giancroce is an individual having an address at 2167 Forest View Road, Aiken, South Carolina 29803 (“Registrant”).

10. Registrant is listed in the records of the U.S. Patent and Trademark Office as the owner of U.S. Registration No. 3,104,379, for the mark SMART PLAN, for “underwriting warranty programs in the fields of heating, ventilation and air conditioning systems,” in International Class 36 (the “Registration”).

11. Registrant claims that the first use of its SMART PLAN mark, and the first use of said mark in commerce, was on October 30, 2005.

12. Less than 5 years have passed since issuance of the Registration, which was issued on June 13, 2006.

Cancellation based on Likelihood of Confusion With
Sears Brands’ Superior Rights in the SMART PLAN Mark

13. Based on its substantial common law rights in the SMART PLAN mark acquired through continuous use of that mark in commerce since at least as early as 1996, Sears Brands’ right to use and register the SMART PLAN mark in association with extended warranty services for appliances is superior to that of Registrant.

14. Registrant’s SMART PLAN mark is similar to and so resembles Sears Brands’ SMART PLAN mark so as to be likely, when applied to Registrant’s services, to cause confusion or mistake or to deceive consumers as to the affiliation, connection, or association of Registrant with Sears Brands, or as to the origin, sponsorship, or approval of Registrant’s services by Sears Brands.

15. Sears Brands will be damaged by the continued existence of U.S. Reg. No. 3,104,379 on the Principal Register, as that registration has been cited against both of Sears Brands’ pending applications for the SMART PLAN mark.

16. Unless U.S. Reg. No. 3,104,379 is cancelled, Sears Brands will likely be precluded from obtaining registration of its SMART PLAN mark and will be denied benefits therefrom.

17. Registrant's U.S. Reg. No. 3,104,379 is therefore subject to cancellation under 15 U.S.C. § 1064, on the basis of Petitioner's superior rights in the SMART PLAN mark.

Cancellation based on Registrant's Abandonment of the SMART PLAN Mark

18. Prior to filing its aforementioned applications to register the SMART PLAN mark, Sears Brands, despite its widespread use in commerce of its SMART PLAN mark in association with extended warranty services for appliances, was unaware of any use of the mark SMART PLAN by Registrant.

19. Sears Brands has been unable to identify any current *bona fide* use of the SMART PLAN mark by Registrant.

20. When contacted by counsel for Sears Brands, Registrant provided a flyer as alleged evidence of its current use of the SMART PLAN mark (Exhibit 1), which bears a copyright date of 2006, the same year the Registration was issued.

21. Upon information and belief, Registrant has not made any use of the SMART PLAN mark in commerce for a period of at least three years.

22. Upon information and belief, Registrant is not currently using, or making any *bona fide* use of, the mark subject of U.S. Registration No. 3,104,379 in commerce, and has no *bona fide* intent to resume using that mark in the foreseeable future.

23. Sears Brands will be damaged by the continued existence of U.S. Reg. No. 3,104,379 on the Principal Register, as that registration has been cited against both of Sears Brands' pending applications for the SMART PLAN mark.

24. Unless U.S. Reg. No. 3,104,379 is cancelled, Sears Brands will likely be precluded from obtaining registration of its SMART PLAN mark and will be denied benefits therefrom.

25. Registrant's U.S. Reg. No. 3,104,379 is subject to cancellation under 15 U.S.C. § 1064, on the basis that Registrant has abandoned its rights in the SMART PLAN mark.

WHEREFORE, pursuant to 15 U.S.C. § 1064, Sears Brands respectfully requests that this Petition for Cancellation be granted, and that U.S. Reg. No. 3,104,379 be cancelled.

Respectfully submitted,

Dated: April 6, 2011

/Jeffrey P. Dunning/
Mark R. Galis, Esq.
Jeffrey P. Dunning, Esq.
Richard P. Bender, Esq.
Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Telephone: 312.456.8400
Facsimile: 312.456.8435

Attorneys for Applicant Sears Brands, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this PETITION FOR CANCELLATION was served upon Registrant, and upon Registrant's representative of record as indicated below, via first class mail, postage prepaid, addressed to:

Robert Giancroce
2167 Forest View Road
Aiken, South Carolina 29803

Timothy E. Moses
HULL, TOWILL, NORMAN, BARRETT & SALLEY
801 BROAD STREET, SUITE 700
AUGUSTA, GA 30901

Dated: April 6, 2011

/Jeffrey P. Dunning/
Jeffrey P. Dunning

EXHIBIT 1



Rejuvenation



Fan Capacitors



Contactor



Acid Test



Filter Drier



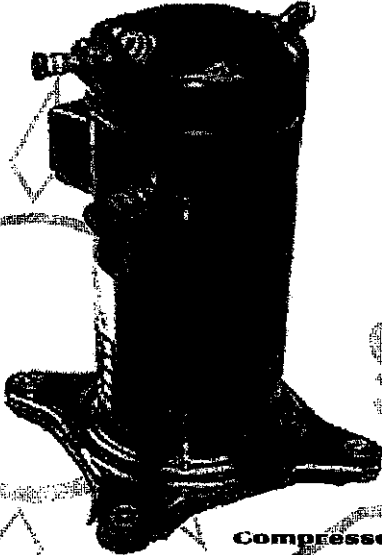
Compressor Capacitor



Copper Tubing



Copper Couplings



Compressor



90 Street Elbow



Wiring Harness

	Recep	Scroll
1.5 Ton	\$2,114.61	N/A
2.0 Ton	\$2,130.23	\$2,261.89
2.5 ton	\$2,132.46	\$2,302.06
3.0 Ton	\$2,210.57	\$2,400.25
3.5 Ton	\$2,239.58	\$2,476.13
4.0 Ton	\$2,469.43	\$2,645.73
5.0 Ton	\$2,663.58	\$2,665.81

Thank you for allowing Mr. Central's Family to visit your home today. If you are reading this brochure you are interested in our newest comfort plan, the SMART Plan. Our SMART Plan is an affordable option that helps you deal with the costly and unexpected issues that all homeowners are faced with; the service or replacement of their home comfort system (heating and air conditioning system). In the past, homeowners have only had these two options to address their home comfort issues; however, with Mr. Central's SMART Plan, clients now have a third option, Rejuvenation.

The SMART Plan rejuvenates your existing system by replacing the compressor (the heart of the outdoor unit), the contactor and the capacitors (vital organs) inside & outside. A complete cleaning and rejuvenation that will take your system close to factory fresh condition. In addition to replacing these main components and cleaning the system thoroughly, when enrolling your equipment in our VIP Care™ Membership program, Mr. Central will also warrant your air handler/coil and condensing unit for a full 5 years on all parts and labor. This will provide you with piece of mind in knowing that you will be extending the life and efficiency of your home comfort system.

Th MrCentral family thanks you for the opportunity to serve you!

Robert Giancroce, President

