

ESTTA Tracking number: **ESTTA411376**

Filing date: **05/26/2011**

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	Yigal C Harel		
Entity	Individual	Citizenship	GERMANY
Address	249 Bryan Road Dania Beach, FL 33004 UNITED STATES		

Attorney information	Meichelle R. MacGregor Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES mrm@cll.com, trademark@cll.com Phone:212-790-9200		
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Registration Subject to Cancellation

Registration No	3097302	Registration date	05/30/2006
International Registration No.	NONE	International Registration Date	NONE
Registrant	Orfeverrie Christoffe 9, Rue Royale 75008 Paris, FRANCE		

Goods/Services Subject to Cancellation

Class 014. Cancelled goods and services in the class: ashtrays

Grounds for Cancellation

Other	See attached pleading.
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Attachments	VERTIGOPETITION.pdf (4 pages)(15024 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	/Meichelle R. MacGregor/
Name	Meichelle R. MacGregor

Date	05/26/2011
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re Registration No. 3,097,302
Registered: May 30, 2006
For Mark: VERTIGO

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YIGAL COHEN HAREL, :
 :
 Petitioner, :
 :
 v. : **CANCELLATION NO.**
 :
 CHRISTOFLE ORFEVRERIE, :
 :
 Registrant. :
----- X

PETITION FOR PARTIAL CANCELLATION

Petitioner, Yigal Cohen Harel (hereinafter referred to as “Petitioner”), believes that he will be damaged by and hereby petitions to partially cancel Registration No. 3,097,302 for the mark VERTIGO with respect to “ashtrays” in Class 14 owned by Christofle Orfeverrie.

The grounds for cancellation are as follows:

1. Petitioner is a German individual with an address at 249 Bryan Road, Dania Beach, Florida 33004, United States.
2. Upon information and belief, Christofle Orfeverrie (hereinafter referred to as “Registrant”), is a French corporation with an address at 9, Rue Royale, 75008 Paris, France.
3. Since May 2001, long prior to Registrant’s priority date of February 8, 2003, Petitioner, his predecessors and their affiliated and related entities, individually and through their

licensees, have used the mark VERTIGO in the United States for lighters and cigar cutters (“Petitioner’s VERTIGO Mark”).

4. Since prior to Registrant’s priority date of February 8, 2003, Petitioner has promoted, advertised and sold lighters and cigar cutters bearing or offered in connection with Petitioner’s VERTIGO Mark.

5. On May 2, 2006, Petitioner filed Application Serial No. 78/874,496 for the mark VERTIGO for “smoking articles, namely, lighters not of precious metal” in Class 34, which was thereafter abandoned.

6. On February 16, 2011, Petitioner filed Application Serial No. 85/243,998 for the mark VERTIGO for “lighters and cigarette cutters” in International Class 34. Application Serial No. 85/243,998 is currently pending before the U.S. Patent & Trademark Office (“USPTO”).

7. During the examination of Petitioner’s Application Serial No. 78/874,496, the USPTO issued an Office Action citing Registrant’s Registration No. 3,097,302 for the mark VERTIGO (“Registrant’s Mark”) insofar as it included “ashtrays” as a bar to registration of Petitioner’s VERTIGO Mark pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

COUNT 1

8. Petitioner incorporates by reference the allegations contained in paragraphs 1-7 above.

9. Registrant was not entitled to appropriate or register Registrant’s Mark for “ashtrays” on February 8, 2003, the date of filing the application thereof, or on May 30, 2006, the date of issuance of the registration thereof, due to Petitioner’s prior rights in Petitioner’s VERTIGO Mark. Registrant’s use of the designation VERTIGO in connection with “ashtrays”

is likely to cause confusion among members of the consuming public with Petitioner's VERTIGO Mark VERTIGO and the goods sold in connection with Petitioner's VERTIGO Mark.

10. Petitioner is damaged by Registrant's Registration because it is anticipated that Registration No. 3,097,302, particularly "ashtrays," will be cited against Petitioner's pending Application Serial No. 85/243,998 for the mark VERTIGO for "lighters and cigarette cutters" in International Class 34, thereby blocking Petitioner's ability to register Petitioner's VERTIGO Mark as well as constituting a cloud on Petitioner's rights in Petitioner's VERTIGO Mark.

COUNT 2

11. Petitioner incorporates by reference the allegations contained in paragraphs 1-10 above.

12. Upon information and belief, Registrant is not using Registrant's Mark in commerce in the United States on or in connection with "ashtrays" as set forth in Registration No. 3,097,302.

13. Upon information and belief, Registrant has never used Registrant's Mark on or in connection with "ashtrays."

14. Upon information and belief, if Registrant ever used Registrant's Mark in connection with ashtrays, such use has ceased and Registrant has no intention to resume use of Registrant's Mark in commerce in the United States on or in connection with "ashtrays."

15. Accordingly, Registration No. 3,097,302 should be partially cancelled as to "ashtrays" on the grounds of non-use and abandonment.

WHEREFORE, Petitioner, by its attorneys, requests that its Petition for Partial Cancellation of Registration No. 3,097,302 with respect to “ashtrays” be sustained and that the registration be cancelled with respect to “ashtrays.”

Please recognize as attorneys for Petitioner in this proceeding Meichelle R. MacGregor (a member of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036. Please address all communications to Meichelle R. MacGregor at the address listed below.

Date: New York, New York
May 26, 2011

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Petitioner

By: /Meichelle R. MacGregor/
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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2011, I caused a true and correct copy of the foregoing Petition for Partial Cancellation to be sent via first class mail, postage pre-paid, to Registrant’s Correspondent and Domestic Representative of Record, Lawrence E. Abelman at Abelman Frayne & Schwab, 666 3rd Ave 10th Fl., New York, NY 10017.

/Meichelle R. MacGregor/
Meichelle R. MacGregor, Esq.