

ESTTA Tracking number: **ESTTA416114**

Filing date: **06/23/2011**

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	Peak Performance Production AB		
Entity	Corporation	Citizenship	Sweden
Address	Box 27224 Stockholm, S-10253 SWEDEN		

Attorney information	Simor L. Moskowitz JACOBSON HOLMAN PLLC 400 7th Street, NW 6th floor Washington, DC 20004 UNITED STATES trademark@jhip.com,smoskowitz@jhip.com Phone:2026386666
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Registration Subject to Cancellation

Registration No	2837338	Registration date	04/27/2004
Registrant	starr, michael 17759 W Cape Jasmine Rd Canyon Country, CA 91387 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2003/09/01 First Use In Commerce: 2003/09/15 All goods and services in the class are cancelled, namely: clothing namely t-shirts, hats, shorts, dresses, and footwear namely shoes for men and women

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	petition to cancel_20110623151229.pdf (5 pages)(163383 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	/Simor L. Moskowitz/
Name	Simor L. Moskowitz

Date	06/23/2011
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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Peak Performance Production AB)	
)	
Petitioner,)	
)	
v.)	Cancellation No.:
)	
Michael Starr)	
)	
Respondent.)	

PETITION FOR CANCELLATION

Petitioner, Peak Performance Production AB, a corporation organized and existing under the laws of Sweden, located and doing business at Box 27224, Stockholm S-10253, Sweden, believes that it is or will be damaged by Registration No. 2,837338 issued April 27, 2004 to Respondent on the Principal Register for the trademark BLACKLIGHT in connection with “clothing, namely, T-shirts, hats, shorts, dresses, and footwear, namely, shoes for men and women” in Class 25. Petitioner hereby petitions to cancel said registration.

As grounds for the Petition, it is alleged that:

(1) Petitioner is a Swedish corporation, located and doing business at Box 27224, Stockholm S-10253, Sweden.

(2) Petitioner has adopted and used the trademark **black*light** in connection with “men's and women's jeans, pants, shorts, shirts, t-shirts, sweatshirts, sweaters, belts, coats, jackets, coveralls, overalls, vests, shoes, ties, socks, scarves, swimwear, boots, polo shirts, blouses, shawls, knit tops, and stockings; sports clothing, namely, footwear, shorts, pants, shirts, skirts, jeans, jerseys, polo shirts, sweatpants, sweatsuits, sweatshirts, jackets, caps, and headbands”; and, on November 24, 2010, Petitioner filed an application for U.S. registration therefor, Serial No. 85/169,736.

(3) On April 27, 2004, Respondent was issued federal Registration No. 2,837,338 for the trademark BLACKLIGHT in connection with "clothing, namely, T-shirts, hats, shorts, dresses, and footwear, namely, shoes for men and women" in U.S. Class 25.

(4) On February 22, 2011, the Trademark Examining Attorney in Petitioner's above-noted **black*light** application, Serial No. 85/169,736, issued an Office Action refusing registration to Petitioner under Section 2(d) of the Trademark Act based upon the subject Registration, No. 2,837,338, on the grounds that "Registration of the applied-for [Petitioner's] mark is refused because of a likelihood of confusion with the mark of U.S. Registration No. 2,837,338".

COUNT I

(5) Petitioner repeats and realleges the allegations of paragraphs 1-4, inclusive, and incorporates same by reference as if fully set forth herein.

(6) Upon information and belief, Respondent has abandoned the BLACKLIGHT trademark which is the subject of Registration No. 2,837,338, as a result of its failure to use BLACKLIGHT as a trademark in commerce in connection with the goods identified in Registration No. 2,837,338 for at least the three (3) years preceding the filing of this Petition, with no intent to resume use of BLACKLIGHT as a trademark.

COUNT II

(7) Petitioner repeats and realleges the allegations of paragraphs 1-6, inclusive, and incorporates same by reference as if fully set forth herein.

(8) Respondent committed a fraud upon the Trademark Office rendering Registration No. 2,837,338 invalid in that on January 17, 2010, Respondent filed a Combined

Declaration of Use and Incontestability Under Sections 8 and 15 wrongly and falsely declaring that the registered BLACKLIGHT mark was then "... in use in commerce on or in connection with **all** of the goods or services listed in the existing registration for this specific class; **and** the mark has been continuously used in commerce for five (5) consecutive years after the date of registration ... and is still in use in commerce on or in connection with **all** goods or services listed in the existing registration..." [Emphasis original], knowing full well that such declaration was false as the mark was not then in use by Respondent on all of the goods identified in the registration and had not been used by Respondent continuously for five (5) consecutive years after the April 27, 2004 date of registration.

COUNT III

(9) Petitioner repeats and realleges the allegations of paragraphs 1-8, inclusive, and incorporates same by reference as if fully set forth herein.

(10) Registration No. 2,837,338 is invalid in that on January 17, 2010, Respondent filed a Combined Declaration of Use and Incontestability Under Sections 8 and 15 wrongly and falsely declaring that the registered BLACKLIGHT mark was then "... in use in commerce on or in connection with **all** of the goods or services listed in the existing registration for this specific class; **and** the mark has been continuously used in commerce for five (5) consecutive years after the date of registration ... and is still in use in commerce on or in connection with **all** goods or services listed in the existing registration..." [Emphasis original], knowing full well that such declaration was false and/or, at a minimum, incorrect, as the mark was not then in use by Respondent on all of the goods identified in the registration and had not been used by Respondent continuously for five (5) consecutive years after the April 27, 2004 date of registration.

(9) By virtue of the foregoing, if Respondent retains such rights as conferred under the Principal Register of the Trademark Act of 1946, Petitioner will be subject to great and

irreparable damage in that it will be unable to federally register its **black*light** mark, and Respondent will enjoy an advantage to which it is not entitled under the Trademark Act of 1946.

WHEREFORE, the Petitioner, Peak Performance Production AB believes and avers that it is being and will continue to be damaged by the continued registration of the BLACKLIGHT trademark as aforesaid, and prays that the Trademark Trial and Appeal Board issue a judgment

- (a) Sustaining the petition for cancellation and rendering judgment for Petitioner;
- (b) Ordering that Registration No. 2,837,338 be cancelled forthwith; and
- (c) For such other and further relief as is deemed appropriate.

Counsel's credit card authorization form for the filing fee for this cancellation, in the amount of \$300.00, is submitted herewith. Should this form become detached or the amount be insufficient, please charge our Deposit Account, No. 06-1358.

Respectfully submitted,

PEAK PERFORMANCE PRODUCTION AB

By: 

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Attorneys for Petitioner

Dated: June 23, 2011
Atty. Dkt. No.: I-6463

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for Cancellation was served via first class mail, postage upon Registrant at his address of record

Michael Starr
17759 W Cape Jasmine Rd.
Canyon Country, CA 91387

this 23rd day of June, 2011.

A handwritten signature in black ink, appearing to read "Michael Starr", is written over a solid horizontal line. The signature is cursive and stylized.