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Filing date: **01/19/2012**

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	Mr Charles Edwards		
Entity	Individual	Citizenship	UNITED STATES
Address	2438 West Anderson Lane C1 Austin, TX 78757 UNITED STATES		

Attorney information	Matthew H. Swyers The Trademark Company 344 Maple Avenue West, Suite 151 Vienna, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com		
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Registration Subject to Cancellation

Registration No	3858605	Registration date	10/12/2010
International Registration No.	NONE	International Registration Date	NONE
Registrant	TELEFONICA, S.A. GRAN VIA, 28 MADRID, 28013 SPAIN		

Goods/Services Subject to Cancellation

Class 028. All goods and services in the class are cancelled, namely: Action figures and accessories therefor; mechanical and electric action toys; baby multiple activity toys; balloons; baseball and softball bats; stationary exercise bicycles; music box toys; chess sets; toy construction blocks, flying discs; dolls; manually operated exercise equipment; exercise machines; fishing equipment, namely, clamps for securing fishing equipment on body and winging material for fishing jigs and streamers; gymnastic apparatus; handballs; jigsaw puzzles; scale model air planes and toy model train sets; musical toys, role playing games; skateboards; snow and water skis; sport balls; stand alone video game machines; decorations for Christmas trees except confectionery or illumination articles

Grounds for Cancellation

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

U.S. Application No.	78881271	Application Date	05/11/2006
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TERRA TOYS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1979/02/01 First Use In Commerce: 1979/03/01 Retail stores featuring toys, games, puzzles, clothing, shoes, art supplies, books, party supplies, hobbies, crafts		

Attachments	78881271#TMSN.jpeg (1 page)(bytes) Petition to Cancel.pdf (6 pages)(38042 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	/Matthew H. Swyers/
Name	Matthew H. Swyers
Date	01/19/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,858,605,
For the mark and design TERRA
Registered on the Principal Register on October 12, 2010.

Edwards, Charles and Allsup, Romalda	:	
	:	
Petitioners,	:	
	:	
vs.	:	Cancellation No. _____
	:	
Telefonica, S.A.	:	
	:	
Registrant.	:	

PETITION TO CANCEL

Petitioners, Charles Edwards and Romalda Allsup, (hereinafter, “Petitioners”), two individuals doing business at 2438 West Anderson Lane, C1, Austin, Texas, believe that they are and will continue to be damaged by the continued registration of U.S. Registration No. 3,858,605 for the mark and design TERRA and, accordingly, hereby petition this honorable tribunal to cancel the same pursuant to 15 U.S.C. § 1064 and 37 C.F.R. § 2.111(b).

Grounds for Cancellation

As grounds for the instant Petition to Cancel, it is alleged that the continued registration of Telefonica, S.A.’s (hereinafter “Registrant”) mark and design TERRA as more fully displayed in U.S. Registration No. 3,858,605, specifically in International Class 28 in relation to toys, would be likely to cause confusion with Petitioners’ mark TERRA TOYS which retains priority of use over Registrant’s mark and design TERRA by virtue of its prior use in commerce in the United States.

Statement of Facts

In support of the instant Petition to Cancel, it is alleged that:

1. Petitioners are the owners of the mark TERRA TOYS used on or in connection with retail store services featuring toys, games, puzzles, clothing, shoes, art supplies, books, party supplies, hobbies, and crafts.

2. Petitioners first used the mark TERRA TOYS in connection with the above-identified services in interstate commerce on or about March 1, 1979.

3. Petitioners' use of the mark TERRA TOYS in connection with the above-identified services has been continuous since on or about March 1, 1979.

4. Petitioners have invested significant sums of money in the promotion of the mark TERRA TOYS and Petitioners' services in the United States.

5. As a result of the aforesaid, Petitioners have developed a valuable reputation and goodwill in their TERRA TOYS mark and have achieved a following among the relevant consuming public prior to the filing, registration and/or priority date of Registrant's application to register the mark and design TERRA as more fully displayed in U.S. Registration No. 3,858,605.

6. On May 11, 2006, Petitioners filed an application to register their mark TERRA TOYS used on or in connection with retail store services featuring toys, games, puzzles, clothing, shoes, art supplies, books, party supplies, hobbies, and crafts in International Class 35. The application received Trademark Application No. 78/812,271.

7. By Office Action dated October 14, 2006, the examining attorney cited the Registrant's applied-for mark and design TERRA as a possible bar to Petitioners' registration of their mark TERRA TOYS based upon the examining attorney's opinion that, if registered,

Petitioners' mark would be likely to create a likelihood of confusion with Registrant's applied-for mark and design for TERRA, identified more fully by U.S. Registration No. 3,858,605, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

8. On December 11, 2006 Petitioners were served a Notice of Suspension by the examining attorney suspending Petitioners' application No. 75/837,364 for the mark TERRA TOYS pending the disposition of the Registrant's application for the mark and design TERRA.

9. Petitioners' application for the mark TERRA TOYS remained suspended until December 21, 2010.

10. By Office Action dated December 21, 2010, the examining attorney issued an initial refusal to register Petitioners' mark TERRA TOYS based on the examining attorney's opinion that, if registered, Petitioner's mark would be likely to create a likelihood of confusion with Registrant's registered mark and design TERRA as more fully displayed in the U.S. Registration No. 3,858,605.

11. On June 16, 2011 Petitioners filed a response to the Office Action dated December 21, 2010 as referenced hereinabove, citing Petitioners have been using their mark TERRA TOYS in commerce longer than Registrant has been using Registrant's mark in commerce in the United States.

12. By office Action dated July 19, 2011 the examining attorney maintained its refusal to register Petitioners' mark TERRA TOYS citing a likelihood of confusion with Registrant's mark and design for TERRA, identified more fully by U.S. Registration No. 3,858,605, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

13. Based upon information and belief, Registrant is a corporation located and doing business at Gran Via, 28, Madrid, Spain, 28013.

14. Registrant is using the mark and design TERRA in connection with the following goods in International Class 28:

Action figures and accessories therefor; mechanical and electric action toys; baby multiple activity toys; balloons; baseball and softball bats; stationary exercise bicycles; music box toys; chess sets; toy construction blocks, flying discs; dolls; manually operated exercise equipment; exercise machines; fishing equipment, namely, clamps for securing fishing equipment on body and winging material for fishing jigs and streamers; gymnastic apparatus; handballs; jigsaw puzzles; scale model air planes and toy model train sets; musical toys, role playing games; skateboards; snow and water skis; sport balls; stand-alone video game machines; decorations for Christmas trees except confectionery or illumination articles.

15. Registrant's U.S. Registration No. 3,858,605, was filed with the United States Patent and Trademark Office on November 11, 1999.

16. Upon information and belief, Registrant first used the mark and design TERRA in connection with the goods covered by its registration in the United States on or about October 12, 2010.

17. As such, Petitioners' rights in the mark TERRA TOYS has priority of use over Registrant's rights in the mark and design TERRA, identified more fully by U.S. Registration No. 3,858,605, inasmuch as Petitioners commenced their use of the mark TERRA TOYS in connection with its services in interstate commerce prior to the filing, registration, and/or priority of use date of the Registrant's registration and use of the mark and design TERRA.

18. Petitioners believe that consumers confronted with the Registrant's mark and design TERRA will inevitably be confused and deceived into the mistaken belief that the Registrant's goods have their origin or are in some manner connected with the Petitioners and/or Petitioners' services offered in connection with their TERRA TOYS mark.

19. The continued registration of Registrant's mark confers upon Registrant's rights to which it is not entitled and is inconsistent with the prior established rights of Petitioners in their mark TERRA TOYS.

20. By reason of the foregoing, Petitioners will be seriously damaged by the continued registration of Registrant's mark and design TERRA.

WHEREFORE Petitioners Charles Edwards and Romalda Allsup, by counsel, pray that the instant petition be granted and U.S. Registration No. 3,858,605 be cancelled.

Petitioners hereby appoint Matthew H. Swyers, Esquire of The Trademark Company, PLLC, 344 Maple Ave., West, Suite 151, Vienna, Virginia 22180, to act as its attorney for Petitioner herein, with full power to prosecute said petition, to transact all relevant business with the United States Patent and Trademark Office, and to receive all official communication in connection with this petition.

Respectfully submitted this 19th day of January, 2012.

The Trademark Company, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esquire

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Vienna, VA 22180

Tel. (800) 906-8626

Fax (270) 477-4574

mswyers@TheTrademarkCompany.com

Counsel for Petitioners

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,858,605,
For the mark and design TERRA
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Petitioners,	:	
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vs.	:	Cancellation No. _____
	:	
Telefonica, S.A.	:	
	:	
Registrant.	:	

Certificate of Service

I HEREBY CERTIFY that a true and accurate copy of the foregoing *Petition to Cancel* was served this 19th day of January, 2012 upon the Registrant via first class mail at the address listed on the TARR database as reported this day as follows:

Perla M. Kuhn
Hughes, Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004-1482

And to

Telefonica, S.A.
Gran Via, 28
Madrid, 28013
Spain

/Matthew H. Swyers/
Matthew H. Swyers