



The Parties hereto were previously involved in another cancellation proceeding before the Trademark Trial and Appeal Board ('TTAB'), cancellation proceedings 92043112 ('Potomac Petition'). Those proceedings were brought by Potomac (therein the petitioner) in relation to its then suspended applications for the YES and YES INTERNATIONAL marks in Class 34, against Petitioner JJH, (therein the registrant) seeking cancellation of JJH's registered mark "YES!". Potomac's then suspended applications were unsuspended after those proceedings and have subsequently matured to the registrations which are the subject of this Consolidated Petition to Cancel.

The grounds for cancellation are as follows:

1. JJH is inter alia in the business of the marketing, sale and distribution of consumer products, including cigarettes.
2. JJH has invested a great deal of time and money in developing and promoting its business and the professional quality of goods bearing its trademarks, and is continuing to spend substantial time and money in reorganizing and developing its business and promoting its goods and trademarks.
3. On February 22, 2000, JJH, having duly researched a mark it intended to use in Commerce in the U.S., and which it had already registered or applied for in other countries, through and upon the advice of its U.S. Counsel at Fredrikson & Byron, LLP. ('Fredrikson & Byron'), filed on an intent to use basis, its first application (Serial No. 75-925,640) for registration of its mark "YES" (later amended to "YES!"), in International Class 34 ('First JJH YES! Application').
4. Said application matured to a registration (as described below). But said registration however was cancelled, after a motion from Potomac and Jennison was granted, in December 2006 at the conclusion of TTAB cancellation proceedings brought by Potomac, in which JJH was confronted with, inter alia, errors in its application and registration and an inability to defend the TTAB cancellation proceedings resulting from incorrect advice from and theft of files by its legal counsel at Fredrikson & Byron, much of which were concealed by its lawyers and

other jurisdictions by other unrelated entities and in many key countries, the US for example, the trademark was not registered. JJH sought the advice of its counsel at Fredrikson & Byron in response to the threats from Potomac. Fredrikson & Byron's Mr. David Charles West informed JJH that Potomac had filed a later application at the USPTO, and that it would be very unusual for the USPTO to consider the threatened action of Potomac at that stage. Mr. West further confirmed that Fredrikson & Byron would carefully review the eventual use of the mark by JJH to ensure it could not be attacked on the basis of fraud (Mr. West having identified fraud to JJH as a basis under US Law which a third party might use to attack another's trademark registration). In its Petition to Cancel, Potomac did not advance any of Mr. Gunzburg's above arguments before the USPTO or the TTAB, relying instead solely on the allegation of fraud in the Statement of Use prepared by Fredrikson & Byron's Mr. West ironically, as detailed below.

12. On October 9, 2002, nearly a year after the USPTO issued its Office Action citing JJH's First YES Application for YES as a potential bar to Potomac's YES Application and five months after Potomac received the notice of suspension of its YES Application – Potomac, by the same European lawyer, Mr. Alain Gunzburg, signing as lawyer with Power of Attorney, filed another §1051(b) Intent-to-use basis application with the USPTO, Application Serial No. 76/459,015 (which would mature into Reg. No. 3,418,779), this time seeking to register the mark 'YES INTERNATIONAL & Design' for "tobacco, cigarettes, and cigars; matches" - 'Potomac's YES INTERNATIONAL Application'.
13. On information and belief, despite being aware of JJH's First YES! Application, and despite being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such false statements may jeopardize the validity of the application or any resulting registration, Potomac nevertheless again averred in its YES INTERNATIONAL application that no other person had the right to use

signed by Potomac's European legal counsel, Mr. Alain Gunzburg, as proxy, for Potomac ('Potomac's YES Application').

9. On information and belief, at the time of the filing Potomac's YES Application on July 31, 2001, Potomac knew or should have known of JJH's already pending First YES! Application, it having been applied for in February 2000 and Published on December 5, 2000. Despite JJH's First YES! Application already being published, and despite being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such false statements may jeopardize the validity of the application or any resulting registration, Potomac nevertheless averred that no other person had the right to use the mark in commerce, either in identical form or in such near resemblance as to be likely to cause confusion. 15 U.S.C. §1051 (b)(D).
10. On September 18, 2001, the USPTO issued an Office Action suspending Potomac's YES Application on the basis of likelihood of confusion with the then pending JJH's YES! Application (Ser. No. 75-925,640).
11. On information and belief, in June 2002, Potomac's European legal counsel, Mr. Alain Gunzburg, wrote to JJH with regard to Potomac's First YES Application, laying claim to the YES mark and informing JJH of Potomac's YES application (as referenced above). Mr. Gunzburg, in his letter claimed inter alia that Potomac had use in the US, Potomac had worldwide use, Potomac's YES was a well known brand in the tobacco industry and made threats and allegations against JJH, ultimately seeking JJH to transfer to Potomac JJH's First YES! Application. JJH duly researched the YES trademark in International Class 34 in the US before making its application, and further research was carried out in other markets where it might be produced or sold and JJH finding no registrations or applications made applications in those markets. The research also showed that Potomac or its parent company (Mastermind Tobacco, a South African company) did own several YES trademark registrations, mainly in Africa, but also that the YES name in class 34 was owned in several

other jurisdictions by other unrelated entities and in many key countries, the US for example, the trademark was not registered. JJH sought the advice of its counsel at Fredrikson & Byron in response to the threats from Potomac. Fredrikson & Byron's Mr. David Charles West informed JJH that Potomac had filed a later application at the USPTO, and that it would be very unusual for the USPTO to consider the threatened action of Potomac at that stage. Mr. West further confirmed that Fredrikson & Byron would carefully review the eventual use of the mark by JJH to ensure it could not be attacked on the basis of fraud (Mr. West having identified fraud to JJH as a basis under US Law which a third party might use to attack another's trademark registration). In its Petition to Cancel, Potomac did not advance any of Mr. Gunzburg's above arguments before the USPTO or the TTAB, relying instead solely on the allegation of fraud in the Statement of Use prepared by Fredrikson & Byron's Mr. West ironically, as detailed below.

12. On October 9, 2002, nearly a year after the USPTO issued its Office Action citing JJH's First YES Application for YES as a potential bar to Potomac's YES Application and five months after Potomac received the notice of suspension of its YES Application – Potomac, by the same European lawyer, Mr. Alain Gunzburg, signing as lawyer with Power of Attorney, filed another §1051(b) Intent-to-use basis application with the USPTO, Application Serial No. 76/459,015 (which would mature into Reg. No. 3,418,779), this time seeking to register the mark 'YES INTERNATIONAL & Design' for "tobacco, cigarettes, and cigars; matches" - 'Potomac's YES INTERNATIONAL Application'.
13. On information and belief, despite being aware of JJH's First YES! Application, and despite being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such false statements may jeopardize the validity of the application or any resulting registration, Potomac nevertheless again averred in its YES INTERNATIONAL application that no other person had the right to use

the mark in commerce, either in identical form or in such near resemblance as to be likely to cause confusion. 15 U.S.C. §1051 (b)(D).

14. On information and belief at the time of the first filing on July 31, 2001, Potomac knew or should have known of the already pending JJH's YES! Application, it having been applied for in February 2000 and Published on December 5, 2000. Potomac was notified of JJH's pending application by the USPTO via an Office Action in response to its YES Application.
15. Potomac's YES INTERNATIONAL Application, being filed well after JJH's First YES! Application, was also duly notified by the examining attorney on February 27, 2003 of JJH's pending application, and on October 1, 2003 a Letter of Suspension was mailed, suspending the Potomac application pending final registration of JJH's First YES! Application; the examining attorney simultaneously providing Potomac with information on JJH's application.
16. On information and belief, JJH (for "YES", later "YES!") and Potomac (for "YES" and "YES INTERNATIONAL") both primarily intended to use their respective applications for said marks for the marketing, sale and distribution of cigarettes bearing the respective mark. Due to the numerous strict restrictions placed on the registration and sale of tobacco products in the United States, particularly cigarettes, the market is extremely costly and time consuming to enter or bring a new brand to market. In addition to Federal Regulations and approvals, each State generally has *inter alia* regulatory requirements, tax compliance and now escrow requirements and regulations (pursuant to the US States' Master Settlement Agreement), such that any person wishing to market and sell cigarettes in most U.S. states legally must make multiple filings and often wait for approval before selling their products in each State, even after it has obtained approvals at the Federal level.
16. On information and belief, Potomac claimed ownership of the YES trademark in Class 34 when presenting its YES and YES INTERNATIONAL cigarette brands to prospective customers, when no such ownership was possible. It became a frequent requirement for registration of tobacco products in States to prove clear and clean ownership of the brand's

trademark. Potomac did obtain one such state registration when it had no such ownership, a fact that JJH brought to the attention of that State's Attorney General, with a request to cancel the registration. All claims of ownership of the YES trademark by Potomac and its distribution partners, were false and damaging to JJH and in Potomac's case, such claims were fraudulent as Potomac knew that its applications for its YES and YES INTERNATIONAL marks with the USPTO were suspended as a result of the prior JJH's First YES! Application.

17. After JJH proceeded to use the mark 'YES!' in Commerce through sales far larger than that suggested by its counsel, Fredrikson & Byron, would qualify as use, JJH provided evidence of such use for its primary good, specifically cigarettes, (First Use : May 29, 2003) to Fredrikson & Byron, along with the sample packaging. Based upon Fredrikson & Bryon's advice, review of the use and preparation of the YES! Statement of Use, and submission thereof to JJH, JJH's authorized director duly reviewed the foregoing and executed said document. Fredrikson & Bryon then filed the YES! Statement of Use with the USPTO.
18. The Registration of JJH's First YES! Application was then made on the Principal Register on February 10, 2004, Registration Number (2,813,328).
19. On information and belief Potomac proceeded to market and, not later than January 2004, to sell cigarettes using a "YES" mark ("YES" or "YES INTERNATIONAL"), in various states, knowingly infringing JJH's First YES! Application and eventual registration and legal rights in the mark. Upon learning of Potomac's attempts to market YES cigarettes in 2003 and even claiming to own the YES trademark, JJH, by Fredrikson & Bryon, sent timely cease and desist notices, then when contraband YES cigarettes were reported to be on sale in the US by Potomac's distributors, JJH, through Fredrikson & Bryon, again sent timely cease and desist notices to Potomac and its known distributors with regard to said contraband. JJH, in order to protect both its USPTO registration and its common law interest in the YES! Trademark, did further notify the Attorney General's Offices of all 50 States of Potomac's infringement of

JJH's mark, with requests to halt any registrations for "YES" or "YES INTERNATIONAL" that were or might later be filed by Potomac. JJH also registered the mark with the U.S. Customs and Border Protection. One of the Potomac distributors for its YES infringing cigarettes contacted by JJH through Fredrikson & Byron with cease and desist letters was Global Marketing & Trading, an Escondido, California based company, who had and apparently still has as legal counsel, Ms. Shultz, of Jennison who would shortly thereafter be appointed by Potomac as its legal counsel.

20. As JJH was preparing to start proceedings against distributors of Potomac's contraband "YES" cigarettes, JJH was notified by the TTAB of a petition filed by Potomac through Jennison to cancel its registered First YES! Mark (Cancellation Petition No. 92043112). On March 19, 2004 Potomac filed said petition alleging JJH had committed fraud in the procurement of its YES! trademark registration, on information and belief, effectively, but not explicitly in the Petition, relying upon the TTAB's May 2003 decision Medinol Ltd. v. Neuro Vasx, Inc. 67 USPQ2d 1205 (TTAB 2003) in the cancellation proceeding. Potomac would later cite Medinol Ltd. (id) in its motion for summary judgment. Potomac's Petition was prepared and submitted by Ms. Shultz of Jennison, with Mr. John N. Jennison and Mr. Carl E. Jennison as co-counsel from Jennison.
21. In Potomac's Petition to Cancel JJH's First "YES!" registered mark (Reg. No. 2,813,328), the TTAB's Medinol Ltd. (id) decision, and the fraud standard under the Lanham Act, together with relevant case law, including but not limited to Torres v. Cantine Torresella S.r.l., 808 F.2d 46, 1 USP2d 1483 (Fed. Cir. 1986) and In Re: Bose Corporation (Fed. Cir. 2009) are we believe instantly and inherently intrinsic to JJH's Petition to Cancel. These cases are not merely the law controlling this petition (albeit that Medinol Ltd. 67 USPQ2d 1205 was overruled by the U.S. Court of Appeals for the Federal Circuit), but are particularly relevant and are material facts in that they relate to Potomac's and Jennison's knowledge, obligations and intent in the present registrations. Potomac did not obtain its two registrations that we are



seeking here to be cancelled, merely through the regular application process, but first it had to obtain cancellation of a competitor's, JJH's, previously registered and used mark, otherwise its applications would have remained suspended until ultimately being cancelled.

22. On information and belief now known and held by JJH, in late 2003 and 2004 the U.S. IP legal community was abuzz with the revolutionary TTAB holding in the Medinol, Ltd. (67 USPQ2d 1205) case, released as a citable precedent of the TTAB in May 2003. Much discussion was made over how the Medinol, Ltd. holding could put long held trademarks in permanent jeopardy, as now simple negligence could result in a cancellation of a mark for "fraud" at any time, no matter how far back any false statement occurred. Particular discussion was made in IP Law articles and journals at the time about how this could particularly affect international trademark holders who were accustomed under foreign practices to registering goods in a wide range or entire class when their actual use was not for all the goods listed or the whole class as the case may be.
23. On information and belief, Potomac and Jennison used the Medinol, Ltd. decision (67 USPQ2d 1205), then Citable as Precedent at the TTAB, as an offensive weapon backed up with false statements and unsubstantiated allegations to attack and to unlawfully obtain the cancellation of JJH's prior and First YES! registration in order to clear the way for the registration of its YES and YES INTERNATIONAL applications, 76,292,227 and 76-459,015, respectively, which were filed substantially later than JJH's First YES! Application, and could not otherwise be registered.
24. On information and belief, in Medinol, Ltd., the petitioner (Medinol), was blocked from registering a different but similar mark for a different good (stents) than the good (catheters) in which the respondent (Neuro Vasx, Inc.) was actually using its mark. In stark contrast to that case, Potomac brought its Petition to Cancel JJH's YES! registration based on Potomac's applications and intention to use the nearly identical marks "YES" and "YES INTERNATIONAL" (INTERNATIONAL being disclaimed) for the same primary good for

- which JJH was actually using the mark, cigarettes, a fact well known to Potomac and Jennison at the time and which use by JJH was de facto conceded in the Potomac Petition.
25. On information and belief, Potomac, a company registered in the British Virgin Islands, and Jennison knew of the aforementioned common international practices in foreign jurisdictions where a party can register a mark for a broad range of goods or even an entire class, when it is not using the mark on all the named goods or the entire class, or even using the mark at all, since not all jurisdictions require use prior to registration. On information and belief, Jennison also knew of such expectations, experiences, understandings or beliefs of international clients for similarly registering trademarks in the US.
26. On information and belief, Potomac itself is seen to have applied for its mark in such a manner, applying on an intent-to-use basis (15 U.S.C. §1051(b)) for not only cigarettes in International Class 34 which they had a genuine intent to use the mark on or in connection with, as they did in a few other countries, but also applied for tobacco, cigars and matches. While matches are a common incidental or supporting good for cigarettes for marketing purposes, as is common practice in the industry, cigars and tobacco are not.
27. For completeness and to avoid prejudice to JJH that might result from misunderstandings due to the previous cancellation proceedings which ended by default judgment due to JJH's inability to continue those proceedings, Clauses 28 to 37 provide information on matters related to the Potomac's Petition to Cancel and issues involving JJH's legal counsel for the original application and the cancellation proceedings, which reflect upon JJH and its inability to previously adequately defend those proceedings, the default judgment against it in those proceedings and the delay in bringing this cancellation proceeding.
28. JJH's First YES! Application filed in February 2000, was handled by Fredrikson & Byron, whose various lawyers were authorized to practice before the USPTO. JJH's said intent-to-use basis trademark application was expanded by Fredrikson & Byron to list 21 goods from International Class 34, including 4 types of tobacco products and 17 smokers' articles. The

USPTO duly issued the Notice of Allowance listing the same goods. During the application process, and as earlier mentioned, JJH duly enquired of Fredrikson & Byron as to “what exactly constitutes use in the US”, and was informed that non-token sales of its cigarettes, specifically 5000 packs, would be sufficient use. Subsequent to that advice, Potomac, by its European based counsel, made threats against JJH in regards to its application, such that Fredrikson & Byron’s lead lawyer, Mr. David C. West, as JJH’s lawyers, specifically undertook that they would make sure that the Use in Commerce by JJH, satisfied them, such that it could not be attacked on the basis of fraud. JJH ultimately decided to wait until it had cleared regulatory hurdles and could evidence substantial sales into trade in the US, rather than relying on a smaller first shipment for marketing and regulatory purposes. Fredrikson & Byron’s lawyers, when presented with the evidence of use, including two invoices totaling over sixteen million YES! cigarettes substantially more than the ‘use’ amount specified above, and samples of the mark contained on packs, cartons and cases of cigarettes, then proceeded to prepare a Statement of Use certifying use as of the date of that sale, marking on the statement of use the mark was in use on the goods contained in the Notice of Allowance. Fredrikson & Byron’s partner in charge, David C. West, attorney registration number 35,735, then submitted that statement of use which was completely filled out and ready for signature, for delivery to JJH’s authorized director to sign. JJH’s then authorized director, a lawyer based in Great Britain, still duly examined the Statement of Use prepared by counsel, the advice of counsel and, knowing of the sale of cigarettes (he had signed the invoice himself) bearing the mark, then signed and returned the statement of use to Mr. West (his statement made in those proceedings provides greater detail on his investigation). Fredrikson & Byron’s David West then again examined the Statement of Use, and in August 2003, submitted the signed Statement of Use, along with the sample cigarette packaging provided by JJH, to the USPTO.

29. The USPTO Examining Attorney examined the sample packaging for cigarettes and determined that the mark in use was YES! not YES, and sent an Office Action to JJH via Fredrikson & Byron, who responded explaining the difference was merely a punctuation mark and was not a material difference. In fact the packaging also contained the slogan, "Yes, I smoke". On information and belief, there was no question from the Examining Attorney with respect to use on other goods than what the packaging represented. JJH in good faith and on reliance upon informed and considered advice of Fredrikson & Bryon, believed it had proper use to support the statement of use and the maturation of the application. The PTO's examining attorney accepted the addition of the exclamation point and the statement of use was accepted. The application matured to registration 2,813,328 on February 10, 2004.
30. Upon receipt in late May 2004 of Potomac's March 19, 2004 Petition to Cancel (No. 92043112), the delay in receipt thereof being explained in filings in those proceedings, JJH immediately contacted its UK based trademark counsel to confer with Fredrikson & Byron on, inter alia, the meaning of the Potomac Petition and whether JJH had in fact a statement of use which could be deemed fraudulent - as it understood from its own reading of the Petition that Potomac was alleging this to be the case. IP Litigation counsel at Fredrikson & Byron, Mr. Dean Karau, responded to the enquiry by stating that the Statement of Use prepared by Fredrikson & Byron was correct in every way, and that as long as JJH had use on cigarettes, what he believed was truly at issue, JJH should prevail. Fredrikson & Byron, by Mr. Dean Karau, filed the Answer to the Petition to Cancel, arguing inter alia that Potomac's Petition failed to state a claim upon which relief could be granted.
31. During the cancellation proceedings discovery process (Cancellation No. 92043112), JJH admitted without hesitation that it was using the mark for cigarettes and was not using the mark on 17 smoker's accessories nor on cigars, cigarillos or tobacco at the time the statement of use was signed (this effectively admitted the lack of use on 20 goods as alleged in the

Petition to cancel), JJH believing such use it had made in Commerce to be adequate use in accordance with the previous advice of Fredrikson & Byron as to “what exactly constitutes use in the US”, which advice was reconfirmed by Fredrikson & Byron, subsequent to their receipt of said Petition.

32. It was not until later in the proceedings that Fredrikson & Byron finally revealed to JJH the existence of “recent case law”, (including Medinol, Ltd. (67 USPQ2d 1205 (May, 2003) at the time citable precedent of the TTAB) and its progeny. In fact the “recent case law” was discovered by a Fredrikson & Byron intern within days of Fredrikson & Byron receiving the Potomac Petition, which research was not provided to JJH at that time – although it was billed to JJH. JJH only found out about this research in late **October 2010**, when Fredrikson & Byron reluctantly handed over their JJH’s YES! Trademark files to a firm engaged by JJH. The intern’s report was dated 9 June 2004 and was sent to Mr. Dean Karau. This “recent case law”, eventually led to Fredrikson & Byron concluding that JJH’s YES! Registration was indeed at risk. Purportedly even later Fredrikson & Byron discovered that some of the arguments they hoped to rely upon as defense for JJH were already tested and failed at the TTAB in Medinol, Ltd. (67 USPQ2d 1205) or its progeny (Fredrikson & Byron LLP. Senior IP partner Mr. Dean Karau did not obtain the Medinol, Ltd. opinions and pleadings until late October 2004, five months after the intern’s report outlined this case).
33. In late 2004, Mr. Dean Karau and Fredrikson & Byron informed JJH that the chance of prevailing at the TTAB was 30/70, and only slightly better on appeal. JJH, having been previously informed by Fredrikson & Byron that JJH had the better part of the argument on “use” in the US and knowing that they had not intended to commit fraud upon the USPTO, enquired about additional defenses and whether or not Fredrikson & Byron had committed an error as they were confronted with a then apparently non-frivolous allegation of “fraud”, despite Fredrikson & Byron, having previously undertaken to JJH to secure a registration which was unassailable on the basis of fraud and having thoroughly scrutinized JJH’s

documented and evidenced use in cigarettes at the time it alleged first use and determined same constituted sufficient use for submission of the Statement of Use to the USPTO.

34. On September 16, 2005, in a complete reversal from their initial position in May 2004, and their Answer to the Petition filed to the TTAB at the beginning of June 2004, Fredrikson & Byron, in a letter from Firm Counsel Mr. John W. Lundquist, opined to JJH - via a draft withdrawal motion that the firm threatened to submit to the TTAB in a few days, attached thereto - that it was not proper to continue defending the Potomac Cancellation proceedings. The threatened draft withdrawal motion to the TTAB was constructed to allow Fredrikson & Byron to withdraw without consent on the basis that JJH and Fredrikson & Byron had irreconcilable differences of opinion on continuing to defend the TTAB proceedings (the first time that JJH had heard of Fredrickson & Bryon's position that it was inappropriate to continue the TTAB litigation). Fredrikson & Byron also alleged other bases for withdrawal without consent, which on information and belief materially misrepresented facts and the TTAB Rules for the permissive withdrawal of attorneys and would have caused, through the fraud and deceit contained therein, deliberate intentional, serious and permanent damage to JJH, Fredrikson & Byron's own client. At no time did Fredrikson & Byron make a declaration of the conflict of interest and explain to JJH their obligations under Minnesota Rules of Professional Conduct (MRPC) or TTAB rules thereon or on their withdrawal of representation without consent. To complete Fredrikson & Bryon's extortion to compel their withdrawal from the TTAB representation of JJH, Mr. Lundquist's September 16, 2005 email went on to offer JJH a way to avoid Fredrikson & Byron's assault, by 'agreeing' to revoke Fredrikson & Bryon's authority to act on behalf of JJH at the TTAB. Through such fraud and extortion committed by Fredrikson & Bryon's Mr. John W. Lundquist with Mr. Dean Karau and Mr. David C. West, while under the supervision of Mr. John Stout, Fredrikson & Byron's senior partner and head of their Corporate Governance practice, and on behalf of the firm of Fredrikson & Byron under the control of the firm's Management Committee, Fredrikson &

Byron unlawfully forced their withdrawal from representation of JJH in the TTAB proceedings. While violating their professional obligations to their client as attorneys through such fraudulent misrepresentation of law and fact and the compelling of their client to accept their resignation in violation of Federal Regulations and MRPC, Fredrikson & Byron, additionally knowingly and intentionally committed fraud upon the USPTO and the TTAB. Mr. Dean Karau proceeded to submit to the USPTO the revocation of authority letter which Mr. John W. Lundquist by his illegal actions and threats to take actions which would cause serious injury to his client, had compelled JJH to sign. This revocation of authority letter, submitted to JJH by Fredrikson & Bryon's Mr. John W. Lundquist effectively but falsely represented to the USPTO that such revocation was done freely and voluntarily by JJH, whereas Fredrikson & Byron had extorted, through such threats of violence and fraud, such revocation. This action by Fredrickson & Bryon is inter alia in violation of the USPTO Rules and Federal Statute covering the lawful withdrawal by attorneys. Further, Fredrikson & Bryon represented to the TTAB that the Firm had supplied their client with all files and materials necessary to continue with the case without prejudice as required by TTAB Rules. In fact, Fredrikson & Byron senior partners, under the watch of their Firm Counsel, their management committee and ethics partner Mr. John Stout, proceeded to withdraw from representation while repeatedly fraudulently misrepresenting to their client that they were turning over all materials and files from their representation to JJH's Substitute Counsel. In fact, Fredrikson & Byron knowingly and intentionally withheld vital research materials (including most of the important cases cited by the US Court of Appeals for the Federal Circuit in *In Re Bose* (91 U.S.P.Q.2d 1938 (Fed. Cir. 2009) effectively reversing the TTAB's Medinol line of cases) and other papers and materials which would have made clear the fact that Fredrikson & Byron senior partners had in their representation of JJH committed multiple acts of gross malpractice as well as fraudulent misrepresentations of law and fact. On information and belief, such actions by Fredrikson & Byron intentionally deceived their

own client in order to hide their malpractice, knowingly violated their ethical obligations and duty of care in hiding their conflict of interest from the client and refusing to act in the best interest of their client. Fredrikson & Byron refused to present to their client proper options for defending the case - including making arguments in their client's interest to the TTAB as such defenses would rely upon admitting the gross malpractice of their attorneys in the lucrative intellectual property law field.

35. Only after the Federal Circuit released *In Re: Bose Corporation* (91 U.S.P.Q.2d 1938) did Fredrikson & Byron Firm Counsel Mr. John W. Lundquist write to JJH's representative and admit that, had JJH continued, Fredrikson & Byron could have defended the case and the result of their continuing to defend would in Lundquist's words have been "the lawsuit with Potomic (sic) would likely have been successfully resolved." On information and belief, this admission and claim by Fredrikson & Byron Firm Counsel Mr. John W. Lundquist puts to rest any doubt as to whether or not Fredrikson & Byron's September 2005 position as to the inappropriateness of continuing to defend the petition was prejudiced upon Fredrikson & Byron's desire to avoid malpractice claims from its client and the clear violations of the duty of care for their client committed by Senior Partners, Firm Counsel, and the Management Committee of Fredrikson & Byron.
36. On information and belief, despite the conflict of interest provisions of the USPTO Rules of Practice and MRPC, Fredrikson & Byron attorneys and partners knowingly and flagrantly violated the rules of lawyer ethical conduct by failing to disclose their gross malpractice in advising their client on Intellectual Property law in the United States. Research files paid for by JJH and not released by Fredrikson & Byron Senior Partners, in a conspiracy to violate the rights and interests of their client, which files were finally turned over to JJH's representative in October 2010, revealed that the representations of US law made by Fredrikson & Byron Senior Partners and Attorneys Mr. Dean Karau and Mr. David C. West were not only incorrect but were egregious misrepresentations of law, many made knowingly and



intentionally so. Fredrikson & Byron's deliberate decision to protect their own self-interest over their professional obligations to protect their client resulted in their failure to disclose material matters related to their advice and to the defense of the Potomac cancellation petition, including but not limited to not releasing files to their client and otherwise not providing JJH with files, documents and materials necessary to the defense of the proceedings, including materials which fell under the discovery order of the TTAB and Potomac's discovery requests pursuant thereto, as well as materially misleading JJH as to the cause and likelihood of success in defending the petition at the TTAB and on appeal.

37. The failure and refusal by Fredrikson & Byron to turn over files and materials required to defend against the Potomac Petition and to comply with the Discovery Order of the TTAB which led up to the default order would later be described by Fredrikson & Byron Firm Counsel Mr. John W. Lundquist as "[JJH] either refused or was unable to respond to discovery requests before the USPTO."
38. After the forced resignation of Fredrikson & Byron, JJH obtained Substitute Counsel. Substitute Counsel was forced with a tight deadline to file a response against Potomac's Motion for Summary Judgment. In his filing to the TTAB, Substitute Counsel noted the prejudice to JJH in the late submission of files to him by Fredrikson & Byron. Substitute Counsel and JJH were at this time unaware Fredrikson & Byron had through their fraudulent misrepresentations and theft of JJH files, caused much greater prejudice to JJH and Substitute Counsel's representation. However, after time to do some research and based upon the partial (but purportedly complete) files and materials provided by Fredrikson & Byron, Substitute Counsel also advised that there was little chance for JJH to prevail at the TTAB. He gave an estimate of costs to continue those proceedings which given the expected outcome at the TTAB as advised by Fredrikson & Byron and Substitute Counsel, was something JJH could not afford or fund given that the effect of the Cancellation Petition had already prevented JJH from continuing its registrations in States of existing sales (such sales had to be halted as a

result) and in other States where JJH had almost completed registration prior to the commencement of the cancellation proceeding. Unfortunately, unbeknownst to Substitute Counsel or JJH, Fredrikson & Byron had retained all of the research files charged to and paid for by JJH which would have provided great support for continuing and taking up the matter on appeal, as well as other materials which could be required to be submitted pursuant to Potomac's discovery requests following the Discovery Order of the TTAB.

39. After JJH received Substitute Counsel's assessment on the likelihood of success at the TTAB, the discovery requests and having received Fredrikson & Bryon's opinion earlier on appeal prospects and Fredrikson & Byron's adamant position that it was not appropriate to continue to defend the case, lacking the significant financial resources to continue and understanding that its prospects to prevail at the TTAB were negligible given the TTAB's decisions in Medinol, Ltd. (67 USPQ2d 1205) and its progeny (this decision coming before the Federal Circuit reversed Medinol, Ltd (67 USPQ2d 1205) in its In re: Bose Corporation (91 U.S.P.Q.2d 1938)), JJH took the tough decision that it could not afford or justify continuing to defend the cancellation proceedings in such light.
40. On information and belief, that decision was unfortunately not notified to the TTAB, so it was not until Jennison petitioned for sanctions and judgment that the cancellation proceedings ended after the TTAB's granting of Potomac's motion.
41. Ultimately, Potomac's Petition for Cancellation was granted by the TTAB on December 14, 2006, with the Commissioner issuing the cancellation of JJH's YES! Mark Reg. No. 2,813,328 on December 18, 2006.
42. Paragraph 10 of Potomac's 2004 Petition to Cancel alleges "Upon information and belief, Respondent (JJH) knew at the time that the statement of first use made in the application that ultimately matured into Reg. No. 2,813,328 was false." At no time did Potomac submit what information it had at the time of making the Petition to support its belief that JJH actually knew its statement of use was false at the time the statement of use was made. Potomac's

allegation went beyond the mere negligence standard of *Medinol, Ltd.* (67 USPQ2d 1205) alleging actual information and belief as to knowledge that JJH knew its statement was false. Upon information and belief, Potomac in fact never had any information to lead it to the belief that fraud was in the heart of JJH at the time it signed the statement of use. To the contrary, being a foreign entity with trademark applications and trademarks in multiple international jurisdictions itself, Potomac was fully aware, at the time of filing the Petition to Cancel that the USPTO's requirement for a statement of use to cover use of each and every good in an application is not the rule in many countries, and in many foreign jurisdictions parties are allowed to and do file for all the goods or relevant goods in a class and not just the goods that the party will be immediately using in connection with the mark. Potomac's asserted belief in its Petition is not supported by but is in fact we believe contrary to its actual knowledge.

43. On information and belief, Potomac's said allegation in paragraph 10 of its Petition to Cancel was made knowing it was a material false statement, upon which the USPTO and TTAB relied, and which ultimately led to cancellation of JJH's mark, leading the way, and being the sole way, for Potomac to obtain registration of its marks, YES and YES INTERNATIONAL (Registration No. 3,409,520 and No. Registration No. 3,418,779).
44. Potomac's paragraphs 3 and 4 of the Petition to Cancel, with respect to its "YES" and "Yes INTERNATIONAL" applications, respectively, both state "The application, which is based on the petitioner's bona fide intention to use the mark in commerce in connection with those products ...". The identified products for both the YES and YES INTERNATIONAL applications at the time of application and at the time of filing the Potomac Petition and stated in paragraphs 3 and 4 respectively were "tobacco, cigarettes, and cigars; matches".
45. On information and belief, Potomac did not at the time of making its applications or at the time of filing its Petition to Cancel JJH's prior mark, have the intention to use their applied for marks in U.S. Commerce on cigars or tobacco. Matches, the sole other good which will

ultimately remain in Potomac's registrations, being related and incidental to the use on cigarettes, a fact illustrated by the sample accompanying Potomac's YES Statement of Use, which is apparently 4 packets of matches but which indicate "20 Class A Cigarettes", with no mention of the content of the package itself, namely matches.

46. On information and belief, Potomac lacked the required intent at the time it submitted its application 76299227 for "YES", to use the mark on tobacco and cigars.
47. On information and belief, Potomac lacked the required intent at the time it submitted its application 76459015 for "YES INTERNATIONAL", to use the mark on tobacco and cigars.
48. On information and belief, Potomac still lacked the required intent to use the "YES" mark on cigars or tobacco, at the time it submitted its Petition to Cancel. Potomac then nevertheless affirmatively stated in Paragraph 3 it had such bona-fide intention to use the mark on tobacco and cigars with respect to its application 76,292,227 for "YES", in the Potomac Petition to cancel, committing a fraud against the USPTO and the TTAB.
49. On information and belief, Potomac still lacked the required intent to use the "YES INTERNATIONAL" mark on cigars or tobacco, at the time it submitted its Petition to Cancel. Potomac then nevertheless affirmatively stated in Paragraph 4 it had such bona-fide intention to use the mark on tobacco and cigars with respect to its application 76/459,015 for "YES INTERNATIONAL", in the Potomac Petition to cancel, committing a fraud against the USPTO and the TTAB.
50. On information and belief, Potomac's counselors at Jennison had an affirmative obligation to inform themselves in sufficient detail of the facts, details, beliefs and assertions upon which the Potomac Petition would be based. On information and belief, Potomac's counselors were required by Federal Rules and the USPTO Rules of Practice to confirm the accuracy of the information and statements made in the Petition generally and in particular the affirmative statements made in Paragraph 3, to confirm the intent of the client Potomac with regard to the expression of intent to use the mark "YES" on or in connection with each and every good so

stated in the application, including tobacco and cigars. On information and belief, Jennison knew at the time that Potomac lacked the required intent but nevertheless represented to the TTAB in Paragraph 3 of the Potomac Petition that they had such intent, maintaining a fraud against the TTAB.

51. On information and belief, Potomac's counselors at Jennison had an affirmative obligation to inform themselves in sufficient detail of the facts, details, beliefs and assertions upon which the Potomac Petition would be based. On information and belief, Potomac's counselors were required by Federal Rules and the USPTO Rules of Practice to confirm the accuracy of the information and statements made in the Petition generally and in particular the affirmative statements made in Paragraph 4, to confirm the intent of the client Potomac with regard to the expression of intent to use the mark "YES INTERNATIONAL" on or in connection with each and every good so stated in the application, including tobacco and cigars. On information and belief, Jennison knew at the time that Potomac lacked the required intent but nevertheless represented to the TTAB in Paragraph 4 of the Potomac Petition that they had such intent, maintaining a fraud against the TTAB.
52. On information and belief, Potomac lacked the required intent, at the time it, by its counsel, submitted its Petition to Cancel. Potomac by its counsel then nevertheless affirmatively stated it had such intent to use the mark on tobacco and cigars with respect to its application 76-459,015 for "YES INTERNATIONAL", in the Potomac Petition to cancel, committing a fraud against the US PTO and the TTAB.
53. On information and belief, Jennison was also required by Federal Rules and the USPTO Rules of Practice to adequately inform their client on the basis and merits for bringing their claim to the TTAB. In this case, Jennison was engaged by Potomac's European based legal counsel, who would have little problem understanding the legal specifics involved, he having previously written to JJH directly threatening to present claims to the USPTO. As part of this process of communicating with the client, Jennison effectively had to relay to Potomac the

basis of bringing a fraud claim under U.S. Law, such a claim as the courts have noted is a serious allegation not to be made lightly. Jennison was required to effectively explain the Medinol decision or at least its legal theory and implications as it was the case upon which they would base their claim, and then collect the information from Potomac to have the various items of "information and belief" upon which they would need to present to the TTAB to have standing and present a claim upon which relief could be granted.

54. On information and belief, Potomac and its counsel had to have communicated regarding the use of all goods in a registration as it was the key basis for asserting fraud in the registration, vis a vis the JJH YES Application being made for 21 goods, and the JJH YES! statement of use covering the same 21 goods. Clearly in its Petition, Potomac stated that upon information and belief it believed JJH did not have use on 20 of the 21 goods and the conclusion Potomac drew from this was that JJH had made a false declaration, that it knew it to be so, and that it had committed a fraud upon the USPTO such that the only valid relief was the cancellation of the trademark. Upon information and belief it is thus clear that both Potomac and Jennison were at that time aware of U.S. law regarding intent to use applications and the serious nature and penalties of the averments made in the registration process (they themselves seeking cancellation for a registration based on one averment being false, and thereby they assert fraudulent).
55. On information and belief, Potomac and its counselors must also have looked upon their own applications and the averments they had made in each and would have to make with respect to both applications in order to sustain a petition to the TTAB. At this point, both Potomac and Jennison knew that Potomac lacked the required intent to use the marks in the two suspended applications on each and every good in the application – namely lacking intent on cigars and tobacco. Nevertheless they represented to the TTAB in paragraphs 3 and 4 that Potomac had such intent, knowingly and deliberately committing fraud against the TTAB and USPTO. The materiality of their statement in the Petition cannot be underestimated, but for

the statement, Potomac would lack standing to bring the Petition, and further, admitting that their own applications were wrong would undermine their alleged belief that JJH had committed fraud.

56. On information and belief, the TTAB did not require Potomac to provide any further showing on standing subsequent to the granting of Potomac's motion for sanctions against JJH, and the order was made for the cancellation of the JJH YES! Registration based upon their Petition.
57. On information and belief, the TTAB relied upon the false and material declarations of Potomac, both in its applications and the Potomac Petition.
58. After the Commissioner's cancellation of JJH's YES! Mark (Reg. No. 2,813,328), the suspensions placed on Potomac's marks were lifted and the process to a mature registration was resumed after holds of approximately 5 years and 4 years respectively.
59. Publication was on June 5, 2007 for YES listing all four goods. On information and belief, prior to Publication, the applicant was sent a Notice of Publication listing the details for publication. Potomac did not respond to the Notice correspondence to request the USPTO to remove two of the goods, cigars and tobacco from the application prior to Publication.
60. Publication was on April 24, 2007 for YES INTERNATIONAL, listing all four goods. On information and belief, prior to Publication, the applicant was sent a Notice of Publication listing the details for publication. Potomac did not respond to the Notice correspondence to request the USPTO to remove two of the goods, cigars and tobacco from the application prior to Publication.
61. A Notice of Allowance was issued for Potomac's "YES INTERNATIONAL" application on July 17, 2007. The Notice of Allowance issued for "034 - Tobacco, cigarettes and cigars; matches".
62. A Notice of Allowance was then issued for Potomac's "YES" application on August 28, 2007. The Notice of Allowance issued for "034 - Tobacco, cigarettes and cigars; matches"

63. On information and belief, not until Potomac's applications were nearing final registration when Potomac filed its Statement of Use, during the first 6 month period after issuance of the Notice of Allowance, did Potomac finally admit to the USPTO that it did not intend to use either the YES or YES INTERNATIONAL Marks in connection with two of the goods, cigars and tobacco, which had been listed on those applications since July 2001 and October 2002 respectively. The Petition to Cancel affirmatively stated that Potomac did intend to use the mark on those goods, they allowed the application to be unsuspended and go to publication listing all four goods, Notices of Allowance to issue, and only when Potomac prepared their allegation of use in January 2008 did the truth come out from Potomac. See USPTO TDR Files for Yes (Registration 3,409,520) and Yes International (Registration 3,418,779).
64. On information and belief, Potomac had the ability to request extensions of time to allow it to have use on goods which it did not use in Commerce in the first six months after the Notice of Allowance was given, such extensions not exceeding six months each, for a total period up to three years from the date of the Notice of Allowance. Potomac also had the ability to divide its application, to allow the registration to mature with respect to the goods it had used the mark on or in connection with, while preserving the other goods, in this case, cigars and tobacco, which it professed having an intent to use it on for so many years, for up to another two and a half years. However, it did not do so. Potomac promptly issued its allegation of use in which it deleted those goods.
65. On information and belief, Potomac filed its Statement of Use for its YES Application on January 8, 2008, alleging first use in commerce on January 14, 2004, at the time when Potomac knew JJH was already using its YES! Mark (Reg. 2,813,328 eventually issued on February 10, 2004). If assumed true, Potomac's own Statement of Use establishes that it was "using", therefore infringing, the JJH YES! Mark prior even to Potomac filing its Petition to Cancel JJH's Registration. JJH believes such actions indicate contempt for the USPTO, the



TTAB, U.S. Federal and State Laws and Regulations and demonstrates the lengths to which Potomac would go to sell its cigarettes, whether legally or illegally, in the US. Paragraph 14 of Potomac's Petition to Cancel JJH's registered YES! mark (cancellation proceedings 92043112) dated March 19, 2004 boldly proclaims "The continued existence of U.S. Registration No. 2,813,328 casts a cloud upon petitioner's right to continue to use, register and expand the use of its YES and YES INTERNATIONAL trademarks, all to the great injury of Petitioner." [emphasis added].

66. Potomac filed its Statement of Use for the YES INTERNATIONAL application on January 8, 2008. Potomac's Statement of Use alleges first use in commerce on January 14, 2004, on a date and at the time when JJH was using and owned the YES! Mark (Reg. 2,813,328 eventually issued on February 10, 2004). If assumed true, Potomac's own Statement of Use establishes that Potomac was "using", therefore infringing, the mark prior even to Potomac filing its Petition to Cancel JJH's YES! Registration. JJH believes such actions indicates contempt for the USPTO, the TTAB, U.S. Federal and State Laws and Regulations and demonstrates the lengths to which Potomac would go to sell its cigarettes, whether legally or illegally, in the US. Paragraph 14 of Potomac's Petition to Cancel JJH's registered YES! mark (cancellation proceedings 92043112) dated March 19, 2004 boldly proclaims "The continued existence of U.S. Registration No. 2,813,328 casts a cloud upon petitioner's right to continue to use, register and expand the use of its YES and YES INTERNATIONAL trademarks, all to the great injury of Petitioner." [emphasis added].

67. Potomac stated in both of its respective statements of use for YES and YES INTERNATIONAL that it believed it was the owner of the mark they sought to register. On information and belief, as Potomac and Jennison knew of JJH's use of the mark YES! on cigarettes and JJH had common law rights in the mark, the claim of belief of Potomac's ownership was not made in good faith. The USPTO relied upon such false statement.

68. On information and belief, Potomac stated in both of its respective statements of use for YES and YES INTERNATIONAL “that the trademark is now in use in commerce”. The Statement of Use for YES was signed on 13 December 2007, and attached thereto was a sample of the mark. However, on information and belief, Potomac had not made continuous use of the mark in Commerce from the date claimed, and may not have had use of the Mark in Commerce even at the time of signing the Statement of Use. As Federal Regulations on cigarettes are quite stringent, getting approval for sale has many requirements, including approval of warning labels. YES was not listed in the June 2008 listing of approved brands issued by the FTC, and we have not found evidence of inclusion on any subsequent listing of the FTC or the FDA which now also has oversight authority.
69. JJH believes Potomac should be estopped from claiming use in Commerce on the YES and YES INTERNATIONAL marks in January 2004 when said trademark applications were then validly suspended due to JJH’s then pending First YES! Application, which matured into registration the following month – February 2004, and JJH was actively then using the mark and sending cease and desist notices to Potomac, particularly in light of the fact that the alleged use was for the same primary good - cigarettes, and Potomac was well aware of JJH’s use of, rights and interests in its YES! mark.
70. JJH believes such estoppels prevent Potomac from having a valid and truthful Statement of Use justifying the registration of the YES mark based on its claimed use in January 2004.
71. JJH believes such estoppels prevent Potomac from having a valid and truthful Statement of Use justifying the registration of the YES INTERNATIONAL mark based on its claimed use in January 2004.
72. On information and belief, JJH’s common law rights in the YES! Trademark and other legal rights are not terminated by the cancellation of its prior registration by the USPTO.
73. On information and belief, Potomac and Jennison knew of JJH’s common law rights in the YES! mark and when Potomac certified in its Statement of Use for YES and its Statement of

Use for YES INTERNATIONAL after being warned that willful false statements and the like so made are punishable by fine or imprisonment, or both and that such willful false statements may jeopardize the validity of the application or any resulting registration, declared that he believes the applicant to be the owner of the trademark sought to be registered without reference to the known ownership rights of JJH makes both such statements willfully false.

74. Both Potomac and Jennison should be estopped from pleading ignorance, confusion, misunderstanding or the like with respect to the requirements of intent on an intent to use application. They were fully aware of the requirements and knowingly made false representations supporting those requirements in order to assert standing and damage in the Potomac Petition.
75. Potomac's YES Application matured into a registration on the principal register on April 8, 2008, Registration 3,409,520.
76. Potomac's YES INTERNATIONAL Application matured into a registration on the principal register on April 29, 2008, Registration 3,418,779.

Separate claims for cancellation based upon abandonment

Notwithstanding the other basis for cancellation of the marks outlined hereinabove, we also submit that the YES and YES INTERNATIONAL marks should be cancelled due to abandonment. In support therefore, we further set forth the following:

77. On information and belief, despite claiming use of YES on January 19, 2004 for cigarettes and matches, in its Statement of Use, and receiving its registration based upon its "use" made while infringing JJH's mark, Potomac has not subsequently continued to make valid and continuous use of the mark "YES" in Commerce on cigarettes and matches. On information and belief, the Registration 3,409,520 should now be cancelled due to abandonment.

78. On information and belief, despite claiming use of YES INTERNATIONAL on January 19, 2004 for cigarettes and matches, in its Statement of Use, and receiving its registration based upon its “use” made while infringing JJH’s mark, Potomac has not subsequently continued to make valid and continuous use of the mark “YES International” in Commerce on cigarettes and matches. On information and belief, the Registration 3,418,779 should now be cancelled due to abandonment.

#### CONCLUSION :

On information and belief, the continued existence of the subject registrations, which were obtained following and as a result of the cancellation of JJH’s YES! Mark through cancellation proceedings which were based on fraudulent allegations and assertions by Potomac and Jennison, not only prevent JJH from proceeding with its subject application, but have and continue to cause JJH serious injury and serious damages. JJH is entitled to full and complete equitable and legal relief, through the striking of these marks and other relief. Based on all of the foregoing, the registrations by Potomac should be cancelled and stricken from the USPTO permanent registry and thereafter, JJH should be free to proceed with its aforementioned application for its mark.

#### SUMMARY:

Grounds for Cancellation of Potomac’s marks –

- Fraud in Potomac’s Applications
- Multiple instances of Fraud in the Potomac Petition by Potomac and Jennison,
- No Standing in the Potomac Petition


- Estoppel accruing from the Potomac's use of YES and YES INTERNATIONAL at the time they were infringing JJH's YES! Registration and Common Law rights.
- Fraud in the Potomac Registrations
- Notwithstanding the foregoing the marks should be cancelled for abandonment.

Wherefore, Petitioner deems that it is or will be damaged by Registration No. 3,409,520 and Registration No. 3,418,779, and as the facts and legal issues involved are largely in common justifying a consolidated petition, petitions for cancellation thereof.

In accordance with 37 C.F.R. §2.6(a)(16), the \$600 filing fee for this consolidated petition is attached.

Respectfully submitted,

J J Holand Limited

  
 By: Keith Murray McCulloch  
 Authorized Officer of the British Virgin Islands  
 Registration No. 66224

Date: June 1, 2012

Certificates of Service

I hereby certify that a true and complete copy of the foregoing Petition to Cancel has been served on Potomac Tobacco Company Ltd by mailing said copy on June 1, 2012, via First Class International Postal Airmail, to:

KATHRYN JENNISON SHULTZ  
JENNISON & SHULTZ, P.C.  
2001 JEFFERSON DAVIS HWY  
SUITE 1102  
ARLINGTON  
VA 22202  
USA

I hereby certify that a true and complete copy of the foregoing Petition to Cancel has also been served on Potomac Tobacco Company by mailing said copy on June 1, 2012, via First Class International Postal Airmail, to:

POTOMAC TOBACCO COMPANY, LTD.  
THE CREQUE BUILDING  
P.O. BOX 116  
ROAD TOWN  
TORTOLA  
BRITISH VIRGIN ISLANDS

I hereby certify that a true and complete copy of the foregoing Petition to Cancel has also been served on Potomac Tobacco Company by mailing said copy on June 1, 2012, via First Class International Postal Airmail, to additional attorney of record and domestic representative recorded in the USPTO registration:

RICHARD E. FICHTER  
BACON & THOMAS, PLLC  
625 SLATERS LANE  
FOURTH FLOOR  
ALEXANDRIA,  
VIRGINIA 22314-1174  
USA

BY:



Keith Murray McCulloch  
Authorized Officer  
J J Holand Limited  
Registered in the British Virgin Islands  
Registration No. 86244