

ESTTA Tracking number: **ESTTA501008**

Filing date: **10/19/2012**

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	Blackstone/OTR, LLC		
Entity	Corporation	Citizenship	GA
Address	6 Riverside Industrial Parkway NE Rome, GA 30161-7301 UNITED STATES		

Attorney information	Todd Deveau Thomas Horstemeyer, LLP 400 Interstate North Parkway SE Suite 1500 Atlanta, GA 30339 UNITED STATES trademarks@tkhr.com, todd.deveau@tkhr.com, amy.kwon@tkhr.com Phone:7709339500
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Registration Subject to Cancellation

Registration No	3851316	Registration date	09/21/2010
Registrant	MAINE INDUSTRIAL TIRE LLC 107 Audubon Road Wakefield, MA 01886 UNITED STATES		

Goods/Services Subject to Cancellation

Class 012. First Use: 2010/04/13 First Use In Commerce: 2010/04/13
All goods and services in the class are cancelled, namely: Tires, off-the road tires

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/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	AERIAL MAX		
Goods/Services	tires, namely off-the road tires		

Attachments	01736555.PDF (5 pages)(81955 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	/Todd Deveau/
Name	Todd Deveau
Date	10/19/2012

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

In Re Trademark Registration No.: 3,851,316

For the Mark: AERIAL MAX
Registered on September 21, 2010

_____)	
Blackstone/OTR, LLC)	
)	Cancellation No. _____
Petitioner)	(To be assigned)
)	
v.)	
)	Docket No. 820602-7020
MAINE INDUSTRIAL TIRE, LLC)	
)	
Registrant.)	
_____)	

PETITION FOR CANCELLATION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

This Petition for Cancellation is brought in the matter of the above trademark registration for the trademark "AERIAL MAX" for "tires, off-the road tires" under Section 1(a) of the Trademark Act ("Registrant's Mark").

Petitioner, Blackstone/OTR, LLC (hereinafter "Blackstone/OTR" or "Petitioner"), believes it has been and will continue to be damaged by the continued registration of the mark identified above, and hereby petitions to cancel the above trademark registration.

The grounds for cancellation are as follows:

1. Petitioner, Blackstone/OTR is a Georgia limited liability corporation, having its

principal place of business at 6 Riverside Industrial Park NE, Rome, Georgia 30161-7301.

2. Long prior to July 30, 2009, the filing date of the application for registration of Registrant's mark, namely believed to be as early as March 2003, Petitioner adopted and used the identical term "AERIAL MAX" (hereinafter sometimes "Petitioner's Mark") as a trademark in connection with tires, in particular, off-the road tires (hereinafter sometimes "Petitioner's Goods"). Since then Petitioner has continuously used its mark in connection with its goods and is still using said mark in commerce in connection with said goods.

3. Registrant has applied to register and registered the trademark "AERIAL MAX" (hereinafter sometimes Registrant's Mark") for use in connection with "tires; off-the road tires" (hereinafter sometimes "Registrant's Goods") in International Class 12.

4. Upon information and belief, the goods of Petitioner and the goods of Registrant, are related, if not identical, goods marketed, offered, and advertised under confusingly similar, if not identical, marks, and are marketed, offered, and advertised in the same or related channels of trade to the same or a related class of customers.

5. Upon information and belief, Registrant's Mark so resembles Petitioner's Mark, which is used in the United States, as to be likely, when used on or in connection with Applicant's Goods, to cause confusion, or to cause mistake, or to deceive in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

6. By reason of all of the foregoing, Petitioner believes it will be gravely damaged by the continued registration of the mark AERIAL MAX by Registrant.

WHEREFORE, Petitioner respectfully requests that this Petition for Cancellation be sustained, and said Registration No. 3,851,316 for the trademark "AERIAL MAX" be cancelled pursuant to Trademark Act §14, 15 U.S.C. §1064.

This Petition for Cancellation is being submitted via the Electronic System for the Trademark Trial and Appeal Board accompanied by the Petition for Cancellation fee under 37

CFR 2.6(a)(16) of \$300.00. Please charge any additional fees to Deposit Account No. 20-0778.

Respectfully submitted,
Thomas|Horstemeyer, LLP

/Todd Deveau/

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Attorney for the Petitioner
Blackstone/OTR, LLC

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

In Re Trademark Registration No.: 3,851,316

For the Mark: AERIAL MAX
Registered on September 21, 2010

_____)	
Blackstone/OTR, LLC)	
Petitioner)	Cancellation No. _____
)	(To be assigned)
v.)	
MAINE INDUSTRIAL TIRE, LLC)	Docket No. 820602-7020
Registrant.)	
_____)	

CERTIFICATE OF SERVICE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I hereby certify that a copy of the Petition for Cancellation filed with the United States Patent and Trademark Office Trademark Trial and Appeal Board on October 19, 2012, is being deposited with the United States Postal Service on the date shown below, with sufficient postage as first class mail, in an envelope addressed to:

DEBORAH L. BENSON
HINCKLEY, ALLEN & SNYDER LLP
28 STATE ST
BOSTON, MA 02109-1775

Respectfully submitted,
Thomas|Horstemeyer, LLP

/Todd Deveau/

Todd Deveau, Reg. No. 29,526
Attorney for the Petitioner
Blackstone/OTR, LLC