

ESTTA Tracking number: **ESTTA547100**

Filing date: **07/08/2013**

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	Edison Opto Corporation		
Entity	Corporation	Citizenship	Taiwan
Address	4F., No. 800, Zhongzheng Rd. Zhonghe Dist. New Taipei City, 235 TAIWAN		

Attorney information	Laura J. Winston Law Office of Laura J. Winston 52 Main Street Hastings-on-Hudson, NY 10706 UNITED STATES tmdocket@winstoniplaw.com Phone:9142317822
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Registrations Subject to Cancellation

Registration No	3768175	Registration date	03/30/2010
Registrant	Temo, Inc. 20400 Hall Road Clinton Township, MI 48038 UNITED STATES		

Goods/Services Subject to Cancellation

Class 037. First Use: 2009/07/28 First Use In Commerce: 2009/07/28 All goods and services in the class are cancelled, namely: Installation, renovation, remodeling, repair, and construction improvements of residential, commercial, and industrial sunrooms, basements and subterranean spaces

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		
Other	Non-use at time of filing Statement of Use		
Registration No	3768176	Registration date	03/30/2010
Registrant	Temo, Inc. 20400 Hall Road Clinton Township, MI 48038 UNITED STATES		

Goods/Services Subject to Cancellation

Class 037. First Use: 2009/07/28 First Use In Commerce: 2009/07/28 All goods and services in the class are cancelled, namely: Installation, Renovation, Remodeling, Repair, And Construction Improvements Of Residential, Commercial, And Industrial Properties, And

Subterranean Spaces

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
Other	Non-use at time of filing Statement of Use

Attachments	00010059.PDF(3301567 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	/Laura J. Winston/
Name	Laura J. Winston
Date	07/08/2013

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

EDISON OPTO CORPORATION,)	
)	
Petitioner;	)	Cancellation No. _____
	)	Mark: TEMO HEALTH
	)	SMART BASEMENT
	)	SYSTEMS
	)	Registration No. 3,768,175
	)	Registered: March 30, 2010
v.)	
	)	Mark: TEMO
	)	HEALTHSMART
	)	BASEMENT SYSTEMS
	)	Registration No. 3,768,176
	)	Registered: March 30, 2010
TEMO, INC.,)	
)	
Respondent.)	
)	

CONSOLIDATED PETITION TO CANCEL

Petitioner, Edison Opto Corporation, a Taiwanese company having its principal place of business at 4F., No.800, Zhongzheng Rd. Zhonghe Dist. New Taipei City 235, Taiwan, believes that it will be damaged by Registration No. 3,768,175 and 3,768,176, and hereby petitions to cancel the same.

To the best of Petitioner's knowledge, the name of the current owner of the registration is Temo, Inc., with an address at 20400 Hall Road, Clinton Township, Michigan 48038.

The grounds for cancellation are as follows:

1. Petitioner filed Trademark Application No. 85/587,250 for the mark TEMO on April 3, 2012 based on (a) an intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b) and (b) priority of its earlier-files Taiwanese trademark application under Section 44(d) of the Trademark Act, 15 U.S.C. § 1126(d). Petitioner seeks registration of TEMO for “interior design services, namely, design of lighting for interiors; product research and development services for others; technical research and technical project studies in the field of solid state lighting; industrial analysis and research in the field of solid state lighting; new products design services; industrial design, namely, design of lighting installations for industrial use; design and technical planning of lighting installations” in International Class 42.

2. Respondent obtained Registration Nos. 3,768,175 for TEMO HEALTH SMART BASEMENT SYSTEMS and Registration No. 3,768,176 for TEMO HEALTHSMART BASEMENT SYSTEMS on March 30, 2010, both for “Installation, Renovation, Remodeling, Repair, And Construction Improvements Of Residential, Commercial, And Industrial Properties, And Subterranean Spaces” in International Class 37 (“Respondent’s marks”). For each mark, Respondent claimed a date of first use anywhere and a date of first use in commerce of July 28, 2009.

3. On April 30, 2012, the Examining Attorney assigned to Petitioner’s application issued an office action refusing registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) based on an alleged likelihood of confusion with Respondent’s marks, and raising informalities.

4. On September 5, 2012, in a response to the office action, Petitioner submitted arguments against the refusal to register its mark under Section 2(d) and addressed the informalities raised in the office action.

5. On October 4, 2013, the Examining Attorney issued a letter of suspension pending availability of a copy of Petitioner's corresponding Taiwanese registration. In the letter of suspension, the Examining Attorney (a) maintained and continued the refusal to register Applicant's mark under Section 2(d), and (b) accepted Applicant's responses to the informalities raised.

6. On January 13, 2010, Respondent filed a Statement of Use in each of the applications to register its marks. The declaration supporting the Statement of Use was signed by Jeffrey P. Thennisch, Respondent's attorney of record and a member of the Michigan bar.

7. On information and belief, the same specimen was filed with each Statement of Use. A copy set of the specimens is attached as Exhibit A.

8. The specimen submitted by Respondent in each of the applications to register its marks contains, in pertinent part, the following wording: "A TEMO HealthSmart Basement System allows you to...upgrade space you already have..."

9. The specimen submitted to show use of Respondent's mark TEMO HEALTH SMART BASEMENT SYSTEMS does not show use of Respondent's mark because it does not show a space between the elements "HEALTH" and "SMART", and because it contains the word SYSTEM instead of SYSTEMS.

10. On information and belief, Respondent was not making use in commerce of Respondent's mark that is the subject of Reg. No. 3,768,175 on the date of filing the Statement of Use.

11. The specimen submitted to show use of the mark TEMO HEALTHSMART BASEMENT SYSTEMS does not show use of the mark because it contains the word SYSTEM instead of SYSTEMS.

12. On information and belief, Respondent was not making use in commerce of Respondent's mark that is the subject of Reg. No. 3,768,176 on the date of filing the Statement of Use.

13. On information and belief, in each of the applications for Respondent's Marks, the Statement of Use contained a false statement that the applied for mark was in use in commerce in connection with the applied-for services.

14. On information and belief, in each of the applications, Respondent knew that the Statement of Use contained a false statement.

15. On information and belief, in each of the applications, Respondent made the false representation with an intent to deceive the United States Patent and Trademark Office ("USPTO").

16. On information and belief, the USPTO reasonably relied on the false representations.

17. On information and belief, the registrations for Respondent's marks were fraudulently obtained.

18. On information and belief, Respondent has not used either of Respondent's marks in commerce in at least the past three years, if ever, and has abandoned its rights in the marks.

19. Petitioner will be damaged by the continued registration of Respondent's marks.

WHEREFORE, Petitioner requests that Registration Nos. 3,768,175 and 3,768,176 be cancelled and that this Consolidated Petition to Cancel be sustained in favor of the Petitioner.

Respectfully submitted,

LAW OFFICE OF LAURA J. WINSTON

Dated: July 8, 2013

By /Laura J. Winston/
Laura J. Winston
Attorney for Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consolidated Petition to Cancel has been served on Registrant Temo, Inc., 20400 Hall Road, Clinton Township, Michigan 48038 by sending same via First Class Mail to the aforementioned address, with a copy to Rebecca L. Wilson, Esq., The Dobrusin Law Firm, 29 W. Lawrence Street, Suite 210, Pontiac, Michigan 48342-2813, on this 8th day of July, 2013.

/Laura J. Winston/

Laura J. Winston

EXHIBIT A



What We Do

Since the beginning, more than 35 years ago, our success has been built on:

- Innovative engineering for superior performance and a smart investment.
- Style you'll be proud to add to your home and share with friends and family.
- A full and dependable warranty, built on the integrity of our reputation.

Exceptional Lifestyle

A TEMO HealthSmart Basement System allows you to:

- Upgrade space you already have, instead of building expensive new space.
- Enjoy your home improvement investment every day, all year.
- Use or divide your space for many activities.
- Increase the value of your home.

Exceptional Performance

TEMO's superior engineering evolves basement finishing to the next level. Everything you want, expect and need is built in.

- All materials are 100% non-organic for mold, moisture, allergen and odor resistance.
- Circulation chamber helps prevent mold growth behind the finishing system.
- Thermal layer provides comfort and saves energy.
- Solid panels for the appearance and performance of standard walls (hang shelves, TV, etc).
- Wiring channels within the panels for electrical, phone, cable.
- Panels are removable to access basement walls if needed.
- Fast installation in just days for ready-to-enjoy use.



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