

ESTTA Tracking number: **ESTTA602498**

Filing date: **05/05/2014**

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	Outback Flashlights, LLC		
Entity	limited liability company	Citizenship	Utah
Address	480 South Geneva Road Orem, UT 84058 UNITED STATES		

Attorney information	Grant R. Clayton Clayton, Howarth & Cannon, P.C. P.O. Box 1909 Sandy, UT 84091 UNITED STATES docketclerk@chcpat.com, gclayton@chcpat.com Phone:801-255-5335		
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Registration Subject to Cancellation

Registration No	3830791	Registration date	08/10/2010
Registrant	Jones, Anthony William 14161 beach blvd Westminster, CA 92683 UNITED STATES		

Goods/Services Subject to Cancellation

Class 011. First Use: 2009/06/20 First Use In Commerce: 2009/06/20 All goods and services in the class are cancelled, namely: Solar water heaters; Solar-powered all-weather lights; Solar-powered cooling units

Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86017451	Application Date	07/23/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	OUTBACK		

Design Mark	<h1>OUTBACK</h1>
Description of Mark	NONE
Goods/Services	Class 011. First use: First Use: 2006/09/30 First Use In Commerce: 2006/10/31 Flashlights

Attachments	86017451#TMSN.jpeg(bytes) Petition to Cancel.pdf(280923 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	/Grant R. Clayton/
Name	Grant R. Clayton
Date	05/05/2014

GRANT R. CLAYTON (Utah Registration No. 32,462)
BRETT J. DAVIS (Utah Registration No. 46,655)
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ATTORNEYS FOR PETITIONER OUTBACK FLASHLIGHTS, LLC

Mark: OUTBACK SERIES
U.S. Trademark Registration No.: 3,830,791
Registered: August 10, 2010

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

OUTBACK FLASHLIGHTS, LLC,)	
)	
Petitioner,)	
)	
v.)	PETITION TO CANCEL
)	
ANTHONY WILLIAM JONES, an individual,)	No. _____
DBA CORAL REEF,)	
)	
Registrant.)	

PETITION TO CANCEL

As grounds for cancelling U.S. Trademark Registration No. 3,830,791 (“the ‘791 Registration”) as to the goods recited only in International Class 11, it is alleged that:

PARTIES

1. Petitioner Outback Flashlights, LLC is a Utah limited liability company (hereinafter referred to as "Petitioner").
2. Upon information and belief, Registrant Anthony William Jones is an individual and doing business as Coral Reef, and has an address of 14161 Beach Blvd, Westminster California 92683 (hereinafter referred to as "Registrant").

FACTS

3. Petitioner was established in 2006 after recognizing an opportunity to introduce custom design flashlights through displays placed next to cash registers at the point of sale.

4. In 2008, Petitioner launched a line of large, high powered flashlights for more additional retail customers. Petitioner expanded its flashlight market to include electrical, plumbing and construction wholesale supply outlets. The large lights also appealed to first responders opening markets with police, fire fighters, search and rescue, and community emergency response teams.

5. At least as early as 2006, Petitioner began using the mark OUTBACK for flashlights in interstate commerce. Petitioner has continued to use the mark OUTBACK on flashlights from 2006 to the present time.

6. Petitioner's long and continuous use of the mark OUTBACK has afforded it substantial common law rights in the mark throughout the United States.

7. Petitioner obtained common law rights in the mark OUTBACK at least as early as 2006.

8. On July 23, 2013, Petitioner filed U.S. Trademark Application No. 86/017,451 ("the '451 Application") for the mark OUTBACK for "flashlights."

9. On October 4, 2009, Registrant filed U.S. Trademark Application No. 77//840,961 (“the ‘961 Application”) for the mark OUTBACK SERIES in International Classes 9, 11, 12, and 28.

10. The filing basis for the ‘961 Application was § 1(a) of the Trademark Act.

11. On August 10, 2010, the ‘791 Registration issued from the ‘961 Application with the following recitation of goods:

International Class 9: Apparatus for converting electronic radiation to electrical energy, namely, photovoltaic solar modules; Solar cells; Solar panels for production of electricity; Solar recharging battery pack for digital cameras

International Class 11: Solar water heaters; Solar-powered all-weather lights; Solar-powered cooling units

International Class 12: Accessories for boats, namely, awnings; Boat accessories, namely, canvas covers, enclosures and windows sold as a unit and affixed to the boat for recreational boating and marine use; Boat hulls; Boats; Boats and structural parts therefor; Ferry boats; Fishing boats; Fitted covers for boats and marine vehicles; House boats; Kayak equipment, namely, solar panels boats; Kayak paddles; Kayak-like boats; Kayaks; Pontoon boats; Sail boats; Structural parts for boats; Tug boats; Vessels; Water vehicles, namely, hydrofoil boats supported by single or multi hulls, and structural parts therefor; Water-jet propulsion driven boats

International Class 28: Surfboards

12. For each of the International Classes, the ‘791 Registration lists the date of first use as June 20, 2009.

13. In an Office Action issued on November 5, 2013 in Petitioner’s ‘451 Application, the USPTO refused registration of Petitioner’s OUTBACK mark under § 2(d) of the Trademark Act alleging a likelihood of confusion with the mark in Registrant’s ‘791 Registration.

14. Upon information and belief, Registrant operates two retail stores, namely, Islands Hawaiian Furniture and Coral Reef Wetsuits. Both retail stores appear to be located at 1461 Beach Blvd, Westminster, CA 92683.

15. Upon information and belief, Registrant further operates the websites www.coralreefwetsuits.com and www.tonycoralreef.com and www.islandshawaiianfurniture.com (hereinafter "Registrant's Websites").

16. The www.islandshawaiianfurniture.com website includes interactive links to several internal product pages. One of the links is labeled "solar products" and, when clicked, directs a user to the following webpage: www.islandshawaiianfurniture.com/solar.

17. The www.islandshawaiianfurniture.com/solar webpage does not list any solar products for sale, including solar products of the type listed in International Class 11, namely, solar water heaters, solar-powered all-weather lights, and solar-powered cooling units. In fact, the www.islandshawaiianfurniture.com/solar webpage includes a graphic stating that the webpage is "under construction."

18. Upon information and belief, none of the Registrant's Websites offer for sale solar products, including solar products of the type listed in International Class 11, namely, solar water heaters, solar-powered all-weather lights, and solar-powered cooling units.

19. The Internet Archive, aka The Wayback Machine, does not provide any versions of the Registrant's Websites that offer for sale solar products of the type listed in International Class 11, namely, solar water heaters, solar-powered all-weather lights, and solar-powered cooling units.

20. Upon information and belief, none of the Registrant's retail locations offer for sale solar products, including solar products of the type listed in International Class 11, namely, solar water heaters, solar-powered all-weather lights, and solar-powered cooling units.

21. Upon information and belief, Registrant did not use, and has not used, the mark OUTBACK SERIES in interstate commerce on all the goods listed in International Class 11 as of

the filing date for the '961 Application, namely, solar water heaters, solar-powered all-weather lights, and solar-powered cooling units, or at anytime since the filing of the '961 Application.

22. Upon information and belief, Registrant has abandoned, without an intent to resume, the mark OUTBACK SERIES with respect to the goods listed in International Class 11 of the '791 Registration, namely, solar water heaters, solar-powered all-weather lights, and solar-powered cooling units.

**FIRST GROUNDS FOR CANCELLATION
(LACK OF USE - INTERNATIONAL CLASS 11)**

23. Petitioner hereby incorporates the preceding allegations as if fully set forth herein.

24. In an application based on use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. §1051(a), the applicant must have used the mark in commerce on or in connection with all the goods and services listed in the application as of the application filing date.

25. A trademark application made under § 1(a) must include a verified statement that the applied for mark is in use in commerce as of the filing date of the application.

26. Upon information and belief, Registrant did not use, either wholly or partially, the mark OUTBACK SERIES in commerce on the goods listed in International Class 11 as of the filing date of the application for the '791 Registration.

27. The '791 Registration must be cancelled as to International Class 11 because Registrant did not use the mark OUTBACK SERIES in commerce as of the application filing date.

**SECOND GROUNDS FOR CANCELLATION
(Abandonment - International Class 11)
(in the alternative)**

28. Petitioner hereby incorporates the preceding allegations as if fully set forth herein.

29. Upon information and belief, Registrant has abandoned either wholly or partially, without an intent to resume, the mark OUTBACK SERIES with respect to the goods listed in International Class 11 of the '791 Registration.

30. The '791 Registration must be cancelled as to International Class 11 because Registrant has abandoned, without an intent to resume, the mark OUTBACK SERIES with respect to those goods.

THIRD GROUNDS FOR CANCELLATION
(LIKELIHOOD OF CONFUSION - International Class 11)
(in the alternative)

31. Petitioner hereby incorporates the preceding allegations as if fully set forth herein.

32. Petitioner's long and continuous use of the mark OUTBACK has afforded it substantial common law rights in the mark.

33. Petitioner's use of the mark OUTBACK is senior to any use of the mark OUTBACK SERIES in the '791 by Registrant.

34. Registrant's OUTBACK SERIES mark is similar in appearance, sound, meaning, connotation, and commercial impression to Petitioner's OUTBACK mark.

35. The goods listed in International Class 11 of the '791 Registration are identical to, or similar to, the goods offered by Petitioner under its OUTBACK mark

36. Registrant's OUTBACK SERIES mark in the '791 Registration, when used in connection with the recited goods in International Class 11, is likely to cause confusion, mistake or deception with Petitioner's mark, OUTBACK.

37. Accordingly, the '791 Registration should be cancelled.

PRAYER FOR RELIEF

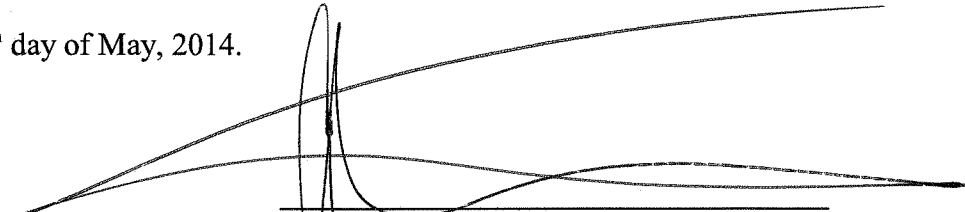
WHEREFORE, Petitioner requests that the '791 Registration be cancelled either wholly or partially as to the goods in International Class 11 and that this cancellation be sustained in its favor.

Any deficiency in the fee submitted can be charged to Deposit Account No. 50-0836.

All correspondence and telephonic communications should be directed to:

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Brett J. Davis
Attorney Docket No. T12901.1
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DATED this 5th day of May, 2014.



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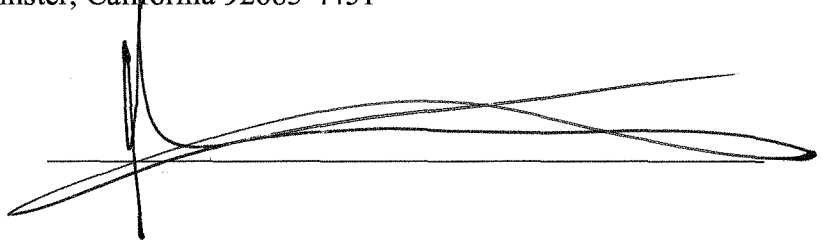
GRC/BJD/kdl

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **PETITION TO CANCEL** to be served, via first class mail, postage prepaid, on this 5th day of May, 2014, to the owner of record as identified on the Trademark Office's TARR database as follows:

Anthony William Jones dba Coral Reef
14161 Beach Blvd
Westminster, California 92683-4451

A handwritten signature in black ink, appearing to read 'Anthony William Jones', is written over a horizontal line. The signature is stylized with a vertical stroke on the left and a long, sweeping horizontal stroke on the right.