

ESTTA Tracking number: **ESTTA616788**

Filing date: **07/21/2014**

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	JMM Lee Properites, LLC		
Entity	Corporation	Citizenship	California
Address	2807 Antigua Dr. Burbank, CA 91504 UNITED STATES		

Correspondence information	Michael J. Lee JMM Lee Properites, LLC 2807 Antigua Dr. Burbank, CA 91504 UNITED STATES mlee@jmmlee.com Phone:206-850-6596
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Registration Subject to Cancellation

Registration No	3382035	Registration date	02/12/2008
International Registration No.	NONE	International Registration Date	NONE
Registrant	TEAM INTERNATIONAL MARKETING N.V. Middenhutlaan 1 BELGIUM		

Goods/Services Subject to Cancellation

Class 007. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Electrical household apparatus, namely,electric shoe polishers
Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: scales, electrically heated hair-curlers and electric flat irons

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Related Proceedings	Cancellation Proceeding No. 92057196
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Attachments	Kalorik Petition to Cancel.pdf(319756 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	/MJLee/
Name	Michael J. Ee
Date	07/21/2014

of Petitioner's knowledge, the address of the current owner of the registration is Middenhutlaan 1B-1640 SINT-GENESIUS-RODE, BELGIUM, with a United States office of 1400 NW 159th Street, #102, MIAMI GARDENS, FLORIDA 33169

PRELIMINARY STATEMENT

TEAM INTERNATIONAL MARKETING N.V. filed a Petition to Cancel JMM Lee's CALORIC trademark (Cancellation No. 92057196) in connection with gas and electric cooking appliances, namely ranges, microwave ovens, barbeque grills, cooktops and kitchen range hoods.

While general grounds for this counterclaim may have existed at the time JMM Lee filed its Answer and Affirmative Defenses, the extent of the fraud pleaded herewith has been learned recently through discovery, including Team International's continued an ongoing misuse of the registration symbol "®". Therefore, JMM Lee respectfully requests that this Petition to Cancel be considered by the Board.

As grounds for the cancellation, Petitioner alleges the following:

1. Petitioner, through its subsidiary, Appliances International, has used the CALORIC mark in commerce in the United States in connection with gas and electric cooking appliances since at least 2009, including sales to California retailers and builders in both California and Washington State.
2. Based on Petitioner's use and trademark registration, Petitioner is the owner of valuable rights in the CALORIC mark in connection with household cooking appliances.
3. Petitioner owns Application Serial No. 85593674 for the mark CALORIC on the

Principal Register in connection with Electric coffee makers; Electric food steamer; Electric frying pans; Electric indoor grills; Electric outdoor grills and waffle irons.

FRAUD- WILLFUL MISUSE OF REGISTRATION SYMBOL "®"

4. Petitioner incorporates the allegations in all of the preceding paragraphs by reference as if fully set forth herein.

5. Team International's misuse of the trademark registration symbol "®" on goods sold under the KALORIK name constitutes fraud.

6. Respondent's initial September 15, 2005 trademark application for the KALORIK mark (U.S. Ser No: 79014218, Int. Reg. No. 0494296) encompassed a wide range of goods including "[e]lectric beaters, electromechanical beverage preparation machines, electric can openers, coffee grinders other than hand-operated; electric crushers and grinders for household purposes; electric knives; electric shoe polishers, electric blenders for household purposes; electric mixers for household purposes; electric food processors; vacuums for household purposes; juice machines" in class 07 and "[s]cales, electrically heated hair-curlers and electric flat irons" in class 09.

7. Due to what the USPTO deemed to be a likelihood of confusion with another registered trademark, Respondent's list of goods and services on its final application was amended to include only [e]lectrical household apparatus, namely, electric shoe polishers, in Class 7, and scales, electrically heated hair-curlers and electric flat irons, in Class 9.

8. The KALORIK mark subsequently registered in class 07 for [e]lectrical

household apparatus, namely, electric shoe polishers, in Class 7, and scales, electrically heated hair-curlers and electric flat irons, in Class 9, but not for the other household appliances listed in the initial application.

9. Despite Respondent's limited trademark registration covering only electric shoe polishers in class 07 and electrically heated hair-curlers and electric flat irons in class 09, on information and belief, Respondent knowingly and willfully misused, and continues to misuse, the "®" symbol in connection with KALORIK goods, including those not registered with the Patent and Trademark Office, with the intent to mislead consumers and others into believing that the mark is registered.

10. Respondent filed a new trademark application for the mark KALORIK with a filing date of Jun. 28, 2012 (Serial No: 85664850). This newly filed application lists many of the same goods that appeared in Petitioner's original (later scaled down) application, including; [e]lectric beaters, electric can openers, electric mixers, electric food processors and vacuum cleaners. Based on this new filing, Respondent knew, or should have known, that such goods were not a part of its active but limited KALORIK registration.

11. Team International's Uri Murad (currently CEO of TEAM KALORIK GROUP) offered JMM Lee \$300,000 to purchase Petitioner's rights to the CALORIC mark in connection with household appliances. Respondent's purchase offer indicates that Team International knew, or should have known, that it was not the owner of a registered trademark for the phonetically similar KALORIK in connections with the aforementioned goods, and therefore did not have priority of registration over JMM Lee's CALORIC mark.

12. Team International continues to misuse the registration symbol "®" on goods not registered in the U.S. Patent and Trademark Office. This misuse of the registration symbol continues subsequent to JMM Lee informing Team International of this improper use. "The improper use of a registration notice in connection with an unregistered mark, if done with intent to deceive the purchasing public or others in the trade into believing that the mark is registered, is a ground for denying the registration of an otherwise registrable mark." *Copelands' Enterprises Inc. v. CNV Inc.*, 20 USPQ2d 1295, 1298 (Fed. Cir. 1991), see also; *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1101 , 192 USPQ 24, 27 (CCPA 1976); *Johnson Controls, Inc. v. Concorde Battery Corp.*, 228 USPQ 39, 44 (TTAB 1985); *Libbey-Owens-Ford Glass Co. v. Plastron, Inc.*, 80 USPQ 591, 592 (Comm'r Pat. 1949); *Weil & Durrse v. United Piece Dye Works*, 70 USPQ 36, 37 (Comm'r Pat.1946).

13. The misuse of the registration symbol by Team International also extends to goods without an active USPTO trademark application, including but not limited to juicers, water kettles and wine coolers.

14. While Respondent may claim that it was ignorant as to the proper use of the registration symbol "®" as it relates to applied for but not registered goods, Respondent undoubtedly should have known that use of the registration symbol in connection with goods without any form of USPTO filing is in violation of U.S. Trademark law.

15. Although Team International may claim to have registered trademarks for the KALORIK mark in nations other than the United States, these registrations do not confer trademark rights within the U.S. "Patents and trademarks are territorial and must be filed in each

country where protection is sought." *USPTO Office of Policy and International Affairs - Protecting Intellectual Property Rights (IPR) Overseas*

16. KALORIK branded electrical goods sold within the United States must be produced specifically for use in North America. Electrically operated KALORIK branded products sold within the United States utilize 110 volt 60 cycle electrical outlets which are proprietary to North America. KALORIK branded products sold in Europe must utilize 220 volt 50 cycle electrical outlets which are not compatible with North American outlets. Consequently, Team International is barred from claiming that it inadvertently sold European goods affixed with the registration symbol to designate foreign registrations since these products would not operate properly on U.S. 110 volt power.

17. Internet archives, packaging material and home appliances sold by Team International displayed the registration symbol "®" adjacent to the KALORIK name going back as far as 2008 and as recently as 2014, thereby misleading consumers and those in the appliance trade into believing that all KALORIK goods and services are registered with the Patent and Trademark Office. Goods displaying the "®" symbol include but are not limited to, toasters, bread makers, coffee makers, grills, waffle makers, blenders and food processors.

18. Cancellation is appropriate as the Lanham Act § 14(3) permits cancellation of a U.S. trademark registration, at any time, if the registration was obtained fraudulently.

WHEREFORE, Petitioner respectfully requests that this Petition for Cancellation be sustained and that Registration No. 3382035 for the mark KALORIK be cancelled.

*In the Matter of U.S. Registration No. 3382035
In the name of Team International Marketing N.V.
Mark: KALORIK*

Dated: July 21, 2014

Respectfully submitted,

By: /Michael J. Lee/
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CERTIFICATE OF SERVICE UNDER 37 C.F.R. §2.119(a)

I hereby certify that on July 21, 2014 the following documents are being deposited with the United States Postal Service, with sufficient postage as first class mail in an envelope addressed to attorney of Respondent:

Patel & Almeida, P.C.
16830 Ventura Blvd., Suite 360
Encino, CA 91436

/Michael J. Lee/

JMM Lee Properties, LLC