

ESTTA Tracking number: **ESTTA628506**

Filing date: **09/22/2014**

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	Yapstone, Inc.		
Entity	Corporation	Citizenship	CALIFORNIA
Address	2033 N. Main Street, Suite 510 Walnut Creek, CA 94596 UNITED STATES		

Attorney information	MICHAEL G. KELBER NEAL, GERBER & EISENBERG LLP 2 NORTH LASALLE STREET, SUITE 1700 CHICAGO, IL 60602 UNITED STATES mkelber@ngelaw.com, afuelleman@ngelaw.com, temanuelson@ngelaw.com, acrawford@ngelaw.com, ecfdocket@ngelaw.com Phone:312.269.8000		
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Registrations Subject to Cancellation

Registration No	3934852	Registration date	03/22/2011
Registrant	MPOWER Mobile, Inc. 601 North Lamar Blvd, Suite 300 Austin, TX 78703 UNITED STATES		

Goods/Services Subject to Cancellation

Class 036. First Use: 2008/03/10 First Use In Commerce: 2008/03/10 All goods and services in the class are cancelled, namely: Financial services, namely, banking services provided by mobile telephone connections, electronic debit and credit cardservices, electronic fund transfer, electronic fund transfer provided by mobiletelephone services, financial services in the nature of remote check deposit services, bill payment services, currency exchange services, providing electronic fund processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payments
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Grounds for Cancellation

Abandonment	Trademark Act section 14		
Registration No	4254180	Registration date	12/04/2012
Registrant	MPOWER Mobile, Inc. 601 North Lamar Boulevard, Suite 300 Austin, TX 78703 UNITED STATES		

Goods/Services Subject to Cancellation

Class 036. First Use: 2008/03/10 First Use In Commerce: 2008/03/10 All goods and services in the class are cancelled, namely: financial services, namely, banking ser-

vices provided by mobile telephone connections, electronic debit and credit card services, electronic fund transfer, electronic fund transfer provided by mobile telephone services, financial services in the nature of remote check deposit services, bill payment services, providing electronic fund processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payments
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition_to_Cancel_YAP.pdf(14185 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	/Michael G. Kelber/
Name	MICHAEL G. KELBER
Date	09/22/2014

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

In the Matter of Registration Nos.)	
3,934,852 for YAP, and)	
)	
4,254,180 for YAP (& design))	
)	
YAPSTONE, INC.)	Cancellation No. _____
)	
Petitioner,)	
)	
v.)	
)	
MPOWER MOBILE, INC.)	
)	
Respondent.)	

COMBINED PETITION FOR CANCELLATION

This Combined Petition for Cancellation is submitted in the matter of Registration Nos. 3,934,852 and 4,254,180, which are owned by Mpower Mobile, Inc., a Delaware corporation with a place of business at 601 North Lamar Blvd, Suite 300 Austin, Texas 78703 (“Respondent”). Registration No. 3,934,852 for the mark YAP issued on March 22, 2011 and Registration No. 4,254,180 for the mark YAP (& design) issued on December 4, 2012, both for use in connection with “financial services, namely, banking services provided by mobile telephone connections, electronic debit and credit card services, electronic fund transfer, electronic fund transfer provided by mobile telephone services, financial services in the nature of remote check deposit services, bill payment services, currency exchange services, providing electronic fund processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payment” in International Class 36. YapStone, Inc., a California corporation with a place of business at 2033 N. Main Street, Suite 510 Walnut Creek, California

94596 (“Petitioner”), believes that it will be injured by the continued registration of Registration Nos. 3,934,852 and 4,254,180 and, therefore, petitions to cancel the same.

The grounds for this Petition are as follows:

1. For many years, and long prior to the acts of Respondent alleged herein, Petitioner has been engaged in providing a sophisticated electronic payment processing platform that powers payments for all types of companies, including international marketplaces to specific industries, including apartment rentals, vacation rentals and non-profits. Petitioner provides its services to consumers across the United States, as well as throughout the world.

2. For over 15 years, Petitioner has used the mark YAPSTONE in connection with, *inter alia*, the aforesaid services. As a result of this use and promotion of the YAPSTONE mark, Petitioner has built up and now owns considerable consumer recognition, which is symbolized by its YAPSTONE mark, which is a valuable asset of the Petitioner.

3. Petitioner has applied for federal registration of the mark YAPSTONE, Serial No. 86/137,544, in connection with “providing electronic processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payments” in International Class 36.

4. Respondent obtained federal registrations for the mark YAP and YAP (& design), both for use in connection with “financial services, namely, banking services provided by mobile telephone connections, electronic debit and credit card services, electronic fund transfer, electronic fund transfer provided by mobile telephone services, financial services in the nature of remote check deposit services, bill payment services,

currency exchange services, providing electronic fund processing of electronic funds transfer, ACH, credit card, debit card, electronic check and electronic payment” in International Class 36, which were issued March 22, 2011, (Reg. No. 3,934,852) and December 4, 2012 (Reg. No. 4,254,180), respectively (the “Registrations”).

5. The Registrations have been cited in a Section 2(d) likelihood of confusion refusal to Petitioner’s pending application for the mark YAPSTONE.

6. On information and belief, Respondent is no longer using the YAP Marks in interstate commerce with the goods for which the marks have been registered. On information and belief, Respondent is not using and has abandoned the YAP Marks within the meaning of Section 45 of the Trademark Act, 15 U.S.C. § 1127. The Registrations should therefore be cancelled in accordance with Section 14 of the Trademark Act, 15 U.S.C. § 1064.

7. Petitioner is being and is likely to continue to be damaged by the continued registration of Respondent’s YAP Marks in that Petitioner’s application to register YAPSTONE is being impaired by Respondent’s continued registration of Registration Nos. 3,934,852 and 4,254,180.

WHEREFORE, Petitioner requests that Registration Nos. 3,934,852 and 4,254,180 be cancelled and that this Combined Petition for Cancellation be granted.

Date: September 22, 2014

Respectfully submitted,
By: /Michael G. Kelber/
One of the Attorneys for
Yapstone, Inc.

Michael G. Kelber
Andrea S. Fuelleman

Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Chicago, Illinois 60602-3801
(312) 269-8000

CERTIFICATE OF SERVICE

I, Andrea S. Fuelleman, an attorney, state that I served a copy of the foregoing **COMBINED PETITION FOR CANCELLATION** upon:

MPOWER Mobile, Inc.
1703 West 5th Street, Suite 810
Austin, TEXAS 78703

via First Class Mail on September 22, 2014.

/Andrea S. Fuelleman/
Andrea S. Fuelleman

NGEDOCs: 2198244.1