

ESTTA Tracking number: **ESTTA710412**

Filing date: **11/23/2015**

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	PHILIP MORRIS USA INC.		
Entity	Corporation	Citizenship	Virginia
Address	6601 West Broad Street Richmond, VA 23230 UNITED STATES		

Attorney information	Ann K. Ford DLA PIPER LLP (US) 500 8th Street, NW Washington, DC 20004 UNITED STATES ann.ford@dlapiper.com, thomas.zutic@dlapiper.com, john.nading@dlapiper.com, ashley.joyce@dlapiper.com, dctrade- marks@dlapiper.com Phone:202-799-4000
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### Registration Subject to Cancellation

Registration No	3777164	Registration date	04/20/2010
International Registration No.	NONE	International Registration Date	NONE
Registrant	Japan Tobacco Inc. 2-1, Toranomom 2-chome, Minato-ku, Tokyo, 105-8422, JAPAN		

### Goods/Services Subject to Cancellation

Class 034. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Cigarettes, raw and manufactured tobacco
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### Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition for Cancellation -- ASPEN Reg. No. 3777164.pdf(69299 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	/Ann K. Ford/
Name	Ann K. Ford
Date	11/23/2015

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

In the matter of Trademark  
Registration No. 3777164  
Mark: ASPEN  
Filed: July 2, 2009  
Registered: April 20, 2010

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PHILIP MORRIS USA INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. _____
	)	
JAPAN TOBACCO INC.,	)	
	)	
Registrant.	)	

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**PETITION FOR CANCELLATION**

Petitioner Philip Morris USA Inc. (“Petitioner”) believes that it is and will be damaged by the continued presence on the Principal Register of Registration No. 3777164 owned by Japan Tobacco Inc. (“Registrant”) for the trademark ASPEN (“ASPEN Mark”) registered in connection with “cigarettes, raw and manufactured tobacco” in International Class 34. Petitioner hereby petitions to cancel said registration under the provisions of Section 14 of the Trademark Act of 1946 (“Lanham Act”), 15 U.S.C. §1064.

As grounds for the Cancellation, Petitioner alleges the following:

1. Petitioner is a Virginia corporation with a principal place of business at 6601 West Broad Street, Richmond, Virginia 23230.
2. Since 1883, Petitioner and its predecessors-in-interest have manufactured, marketed, and sold cigarettes, including the famous MARLBORO brand cigarettes, in the United States. Petitioner is the largest cigarette company in the United States, with total cigarette

shipment volume in the United States of approximately 125.4 billion units in 2014. Petitioner has obtained numerous federal trademark registrations with the United States Patent and Trademark Office (“USPTO”) for its trademarks and brands, and has invested substantial time, effort, and money in advertising and promoting its brands.

3. Petitioner is also the owner of the trademark ASPEN BLEND, U.S. Application Serial No. 86829012 for “tobacco products, namely, cigarettes” in International Class 34, which was filed on an intent-to-use basis on November 23, 2015 (“Application”). At the time of filing this Petition for Cancellation, the Application has not yet posted to the USPTO’s Trademark Status and Document Retrieval (TSDR) or Trademark Electronic Search System (TESS) online databases. Attached hereto as Exhibit A and made part of the record is a true and correct copy of the filing receipt for the Application.

4. On July 2, 2009, Registrant, a Japanese corporation having an address at 2-1, Toranomom 2-chome, Minato-ku, Tokyo, 105-8422, Japan, filed an intent-to-use application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), and under Section 44(e) of the Lanham Act, 15 U.S.C. § 1126(e), with the USPTO for registration of the ASPEN Mark. That application was assigned Serial No. 77773030. The ASPEN Mark registered on the Principal Register on April 20, 2010 as Registration No. 3777164 (“Registration”).

5. Petitioner files this Petition for Cancellation because, upon information and belief and as set forth below, Registrant has abandoned and is no longer using the ASPEN Mark as depicted in the Registration.

6. Petitioner is concerned that the Registration may interfere with registration of its Application and, therefore, Petitioner will be damaged by the continued presence of the Registration on the Principal Register.

**ABANDONMENT**  
**SECTIONS 14 & 45 OF THE LANHAM ACT, 15 U.S.C. §§ 1064 & 1127**

7. Petitioner re-alleges the allegations contained in Paragraphs 1 through 6 of this Petition for Cancellation.

8. Upon information and belief, Registrant is not using the ASPEN Mark, as depicted in the Registration, for “cigarettes, raw and manufactured tobacco” in the United States.

9. Upon information and belief, Registrant has not used the ASPEN Mark, as depicted in the Registration, for “cigarettes, raw and manufactured tobacco” in the United States for at least three consecutive years.

10. Upon information and belief, Registrant has no intent to resume use of the ASPEN Mark, as depicted in the Registration, for “cigarettes, raw and manufactured tobacco” in the United States.

11. Intent not to resume may be inferred from circumstances. Nonuse for three consecutive years is *prima facie* evidence of abandonment. 15 U.S.C. § 1127.

12. Registrant has abandoned the ASPEN Mark, as depicted in the Registration, within the meaning of Section 45 of the Lanham Act, 15 U.S.C. § 1127, because of Registrant’s non-use of the ASPEN Mark for “cigarettes, raw and manufactured tobacco” with no intent to resume use of the mark.

13. Since Registrant has abandoned the ASPEN Mark, as depicted in the Registration, the Registration is subject to cancellation under Section 14 of the Lanham Act, 15 U.S.C. § 1064.

By virtue of the foregoing, Petitioner believes that it is now and will be damaged by the continued presence on the Principal Register of Registration No. 3777164 for the ASPEN Mark. If Registrant is permitted to maintain the Registration and retain such rights as conferred under

the Principal Register of the Lanham Act, Registrant will retain unlawful gain and advantage to which Registrant is not entitled under the Lanham Act, to the detriment and harm of Petitioner.

WHEREFORE, Petitioner believes and avers that it is being, and will continue to be, damaged by Registration No. 3777164 for the ASPEN Mark, and respectfully requests that Registration No. 3777164 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Petitioner hereby appoints Ann K. Ford, a member of the Bar of the District of Columbia, Thomas E. Zutic, a member of the Bar of the District of Columbia, John M. Nading, a member of the Bar of the District of Columbia, David M. Kramer, a member of the Bar of the District of Columbia, Eunice R. Chung, a member of the Bar of the District of Columbia, Ashley H. Joyce, a member of the Bar of the District of California, and all of the law firm of DLA Piper LLP (US), 500 8th Street, NW, Washington, DC 20004, telephone number (202) 799-4000, to transact all business in the USPTO in connection with this Cancellation Proceeding and hereby revokes all previous powers of attorney herein.

Please address all correspondence to:

Ann K. Ford, Esq.  
DLA Piper LLP (US)  
500 8th Street, NW  
Washington, DC 20004  
*dctrademarks@dlapiper.com*

The filing fee for this Cancellation in the amount of \$300.00 is hereby electronically transferred with the submission of the Petition for Cancellation.

The undersigned, registered agent for Petitioner herein, states that she is authorized to prosecute this Cancellation, that she has read and signed the foregoing Petition for Cancellation and knows the contents thereof, and that all statements made on information and belief are

believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that willful false statements may jeopardize the validity of this Cancellation and any decision resulting therefrom.

Dated: November 23, 2015

Respectfully submitted,

**DLA PIPER LLP (US)**

By: /s/ Ann K. Ford  
Ann K. Ford  
Thomas E. Zutic  
John M. Nading  
Ashley H. Joyce  
500 8th Street, NW  
Washington, D.C. 20004  
Tel. 202-799-4000  
Fax 202-799-5000

*Attorneys for Petitioner  
Philip Morris USA Inc.*

## **Exhibit A**



**From:** TEAS@uspto.gov  
**Sent:** Monday, November 23, 2015 2:01 PM  
**To:** DC Trademarks; Esau, Gregory; trademarkgroup@altria.com  
**Subject:** Serial number 86829012: Received Your Trademark/Service Mark Application, Principal Register

1. **YOUR MARK:** ASPEN BLEND (Standard Characters, mark.jpg)  
The literal element of the mark consists of ASPEN BLEND.  
The mark consists of standard characters, without claim to any particular font, style, size, or color.
2. **YOUR SERIAL NUMBER:** We have received your U.S. Trademark Application and assigned serial number '86829012' to your submission. A summary of your application data is provided at the bottom of this message and serves as your official filing receipt. Please keep a copy of this information for your records. All correspondence concerning the application should reference your assigned serial number.

Please read all of the important information below. Not every mark is registrable with the USPTO and we do not refund the application filing fee(s) if a registration does not ultimately issue.

3. **RECEIVING E-MAIL COMMUNICATIONS/FILING DOCUMENTS ON-LINE:** Because you have authorized receipt of correspondence by e-mail, please make sure that your server will accept USPTO e-mail and not treat it as SPAM. If you must submit correspondence to us, please use the Trademark Electronic Application System (TEAS) forms, available at <http://www.uspto.gov/trademarks/teas/index.jsp>. Applicants who filed their application online using the lower-fee TEAS RF application form must (1) continue to submit certain documents online using TEAS, including responses to Office actions (see [http://www.uspto.gov/trademarks/teas/required\\_teas\\_filings.jsp](http://www.uspto.gov/trademarks/teas/required_teas_filings.jsp) for a complete list of these documents); (2) accept correspondence from the USPTO via e-mail throughout the examination process; and (3) maintain a valid e-mail address. TEAS RF applicants who do not meet these three requirements must submit an additional processing fee of \$50 per international class of goods/services. However, in certain situations, authorizing an examiner's amendment by telephone will not incur this additional fee.
4. **KEEP YOUR ADDRESS CURRENT IN USPTO RECORDS:** We do not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must update the correspondence and/or owner's address if a postal address and/or e-mail address changes, using the form(s) available at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.
5. **WARNING ABOUT UNSOLICITED COMMUNICATIONS:** You may receive trademark-related communications from private companies not associated with the USPTO. These communications frequently display customer-specific information, including your USPTO serial number or registration number and owner name, and request fees for trademark-related services, such as monitoring, listings in international publications, and document filing. None of the companies offering these services are affiliated with the USPTO or any other federal agency. All official correspondence will be from the "United States Patent and Trademark Office" in Alexandria, VA, and if by e-mail, specifically from the domain "@uspto.gov." Please consult the "Warning" page on the Trademarks section of the USPTO's website for further information about unsolicited communications and to view

representative examples of them. For general information on filing and maintenance requirements for trademark applications and registrations, including fees required by law, please consult [www.uspto.gov](http://www.uspto.gov), contact the [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or telephone 1-800-786-9199.

6. **LEGAL EXAMINATION PROCESS:** Your application is now pending examination. In approximately 3 months, your application will be assigned to a USPTO examining attorney for review. The application cannot mature into a registration unless all legal requirements are met, and many applications never satisfy these requirements and therefore never register. The overall process can take up to 18 months.
7. **CHECK STATUS AND REVIEW DOCUMENTS OR YOUR APPLICATION MAY BE UNINTENTIONALLY ABANDONED:** You **must** check the status and review all documents associated with your application at least every 3-4 months using Trademark Status and Document Retrieval (TSDR), available at <http://tsdr.uspto.gov/>.

Promptly e-mail the [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or telephone 1-800-786-9199 (select option #1) if an Office action (letter from the USPTO) or notice has issued for your application that you did not receive or do not understand. Failure to respond timely to any Office action or notice may result in the abandonment of your application, requiring you to pay an additional fee to have your application revived even if you did not receive the Office action or notice.

8. **FILING ERRORS:** If you discover an error in the application data, you must file a Voluntary Amendment at <http://www.uspto.gov/trademarks/teas/miscellaneous.jsp>. Do **not** submit any proposed amendment to [TEAS@uspto.gov](mailto:TEAS@uspto.gov), because the TEAS technical support team may not make any data changes. Please wait approximately 7 days after the filing date of your application to submit a Voluntary Amendment in order to allow for initial upload of your application data into the USPTO database. The assigned examining attorney will determine the acceptability of any Voluntary Amendment during examination. Not all errors may be corrected. For example, if you submitted the wrong mark or if the proposed correction would be considered a material alteration to your original filing, it will not be accepted. In this situation, your only recourse would be to file a new application, with a new fee and no refund of your original filing fee.
9. **REQUEST FOR REFUND AND/OR CANCELLATION:** Since your application has already been assigned a serial number, please do not contact [TEAS@uspto.gov](mailto:TEAS@uspto.gov) to request a refund or to cancel the filing. We will only cancel the filing and refund the filing fee if the application does not meet minimum filing requirements. The fee is a processing fee that the USPTO does not refund, even if your mark does not proceed to registration.

In the limited situation where you inadvertently filed identical applications, one immediately after the other, because no confirmation of the first filing was received, please provide both serial numbers to the technical support team at [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

10. **SelectUSA:** The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation, and commercialization of new technologies. The U.S. offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to promote and facilitate business investment. SelectUSA provides information assistance to the international investor community; serves as an ombudsman for existing and potential investors; advocates on behalf of U.S. cities, states, and regions competing for global investment; and counsels U.S. economic development organizations on investment attraction best practices. To learn more about why the United States is the best country in the world to develop technology, manufacture products, deliver services, and grow your business, visit [SelectUSA.gov](http://SelectUSA.gov) or call +1-202-482-6800.

**SUMMARY OF APPLICATION DATA FOLLOWS:**

**APPLICATION DATA:** You have filed a **Trademark/Service Mark Application** for registration on the **Principal Register** using a **TEAS RF** application form.

The applicant, Philip Morris USA Inc., a corporation of Virginia, having an address of  
6601 West Broad Street  
Richmond, Virginia 23230  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 034: Tobacco products, namely, cigarettes  
Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant's current Attorney Information:

Robyn Ettricks and Ann K. Ford Thomas E. Zutic, Ryan C. Compton, John Nading, David Kramer, and Eunice Chung

Law Dept -- 3rd Floor CRT  
601 East Jackson Street  
Richmond, Virginia 23219  
United States

The applicant's current Correspondence Information:

Robyn Ettricks

Altria Client Services Inc.

Law Dept -- 3rd Floor CRT

601 East Jackson Street

Richmond, Virginia 23219

trademarkgroup@altria.com;dctrademarks@dlapiper.com (authorized)

**E-mail Authorization:** I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of \$50 per international class of goods/services.

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

**Declaration**

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as

used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

### **Declaration Signature**

Signature: /michaelsaxon/ Date: 11/20/2015

Signatory's Name: /Michael Saxon

Signatory's Position: /Director

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Thank you,

The TEAS support team

Mon Nov 23 14:01:19 EST 2015

STAMP: USPTO/BAS-206.205.117.10-20151123140119038800-86829012-

540adfe193fb67357705f51abf420d11497d1cba197fd393e2faaa1d326fa86-CC-288-20151118163412750121

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing **PETITION FOR CANCELLATION** was served via U.S. First Class Mail, postage prepaid, and properly addressed to Registrant:

Japan Tobacco Inc.  
2-1, Toranomom 2-chome, Minato-ku  
Tokyo, 105-8422  
Japan

this 23rd day of November, 2015.

/s/ Ann K. Ford  
\_\_\_\_\_  
Ann K. Ford  
*Attorney for Petitioner*