

ESTTA Tracking number: **ESTTA713031**

Filing date: **12/07/2015**

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	H2Coco Pty Limited		
Entity	Company	Citizenship	AUSTRALIA
Address	Area 7, 355 Crown Street Surry Hills, 2010 AUSTRALIA		

Attorney information	Alexander Lazouski Lazouski IP LLC Suite 1 Lakewood Ranch, FL 34202 UNITED STATES al@lzlawoffice.com, info@lzlawoffice.com Phone:2016455616		
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Registration Subject to Cancellation

Registration No	4306389	Registration date	03/19/2013
Registrant	PERFORMANCE PLUS MARKETING, INC. 1541 N Powerline Road Pompano Beach, FL 33069 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2012/12/04 First Use In Commerce: 2012/12/04 All goods and services in the class are cancelled, namely: Carbonated drinking waters, flavored waters, and other non-alcoholic beverages, namely, sports drinks, energy drinks, fruit drinks, vegetable drinks, all made in whole or substantial part of coconut

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

Attachments	Exhibit 1.pdf(513383 bytes) Exhibit 2.pdf(977069 bytes) Exhibit 3.pdf(343443 bytes) Exhibit 4.pdf(1004606 bytes) Cancellation Petition - H2COCO.pdf(179153 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	/asl/
Name	Alexander Lazouski
Date	12/07/2015

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

H2Coco Pty Limited,

Petitioner,

v.

Cancellation No.:
Registration No.: 4306389
Mark: H2COCO

Performance Plus Marketing, Inc.,

Respondent.

PETITION FOR CANCELLATION

Petitioner, H2Coco Pty Limited, an Australian-based company at Area 7, 355 Crown Street, Surry Hills 2010, Australia (“Petitioner”), believes that it will be damaged by continued registration of Registration No. 4306389 for the mark H2COCO (“Respondent’s Mark”) by Performance Plus Marketing, Inc., (“Respondent”), and hereby petitions to cancel same on the basis of that (1) Respondent is not using Respondent’s Mark, having abandoned said mark with no intent to resume use of such mark and (2) Respondent willfully and knowingly perpetrated a fraud in connection with the Registration No. 4306389, which resulted in its registration.

As grounds for the cancellation, it is alleged that:

1. On February 24, 2015 Petitioner filed a U.S. Trademark Application Serial No. 86544275 for H2COCO in International Classes 29, 32 (“Petitioner’s Application”).
2. During the examination of Petitioner’s Application, the USPTO refused registration due to likelihood of confusion with the Respondent’s mark Registration Reg. No. 4306389.

3. According to an Office Action issued in connection with Petitioner's Application, the USPTO believes that the mark in Petitioner's Application so resembles the mark in the Respondent's Mark as to be likely to cause confusion, or to mistake or deceive.
4. Therefore, Petitioner is likely to be damaged by the continued registration of the Respondent's Mark.
5. Upon information and belief, Respondent is a corporation with offices at 1541 N Powerline Road, Pompano Beach, Florida 33069.
6. During the course of the investigation, Petitioner was not able to locate any information about Respondent's Mark on Respondent's website at <http://www.perfplusmktg.com/> in regards to use of the Respondent's Mark in commerce in US (Exhibit 1), online or at brick and mortar stores.
7. On information and belief, Respondent is not using Respondent's Mark, having abandoned said mark with no intent to resume use of such mark for more than three consecutive years.
8. According to TBMP §309.03(c)(11), such nonuse of Respondent's Mark for three consecutive years constitutes prima facie evidence of abandonment.
9. On January 14, 2013 Respondent filed a Statement of Use in connection with Respondent's Mark claiming December 12, 2012 as the date of first use of the mark in commerce.
10. While filing a Statement of Use Respondent its President and CEO Mr. Almutasser "Alex" Hbairu, knowingly made a fraudulent statement wherein it claimed "Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce."

“The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the form or any resulting registration, declares that he/she is properly authorized to execute this form on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.” (Exhibit 4).

11. Upon information and belief, Respondent did not use Respondent Mark in commerce in connection with all the goods covered by the Registration No. 4306389 during the filing of the Statement of Use in connection with Respondent’s mark.

12. Upon information and belief, the attached specimen Respondent used to support the Statement of Use (Exhibit 2) was computer altered and is not an actual picture of the product sold in US.

13. Upon information and belief, Respondent was aware that Respondent’s mark was not in use in commerce during the filing of the Statement of Use.

14. Respondent knowingly made a false, material misrepresentation of fact in connection with Registration No. 4306389 during the filing of the Statement of Use.

15. The USPTO relied on the false and fraudulent declaration when it acknowledged the filing of the Statement of Use for Application Serial No. 85503125 (Registration No. 4306389) and allowed it to be registered.

16. In February 2015 Petitioner contacted Respondent regarding possibility of acquiring Respondent’s Mark H2COCO (Registration Number 4306389) and goodwill associated with the mark. On March 9, 2015 Mr. Almntasser "Alex" Hbairu sent an email to Petitioner’s prior legal

counsel stating that “we are still in the midst of finalizing our product launch as it is one of several we have already launched with plenty of success.” (Exhibit 3).

17. In its March 9, 2015 correspondence Respondent expressly admitted that it never used Respondent’s Mark in commerce in US.

18. Respondent was not entitled to Registration of the Application Serial No. 85503125 (Registration No. 4306389) as Respondent knowingly committed fraud when it filed the Statement of use in connection with Application Serial No. 85503125 (Registration No. 4306389).

19. Respondent’s Registration grants to Respondent statutory rights, to the damage of Petitioner and others and has been identified by as a basis for refusal of Petitioner’s Application for Petitioner’s Mark. Accordingly, Petitioner is likely to be damaged by the continued registration of the Respondent’s Mark.

WHEREFORE, PETITIONER PRAYS THAT Registration Number 4306389 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Petitioner has complied with the requirements for filing the petition to the Director by submission of the \$300 petition fee filed herewith.

Respectfully submitted,

Date: December 7, 2015

/asl/
Alexander S. Lazouski
Lazouski IP LLC
14726 Bowfin Ter., Suite 1
Lakewood Ranch 34202, FL
(201) 645-5616

CERTIFICATE OF SERVICE

According to 37 CFR § 2.111 I hereby certify that I served the foregoing *Petition for Cancellation* upon Registrant's Domestic Representative by causing a true and correct copy thereof to be sent on December 7, 2015 by first class mail, postage prepaid at the correspondence address of record in the Office of:

ANTHONY J. DAVIS
NICOLL DAVIS & SPINELLA, LLP
95 ROUTE 17 SOUTH
SUITE 316
PARAMUS, NEW JERSEY 07652
UNITED STATES

Date: December 7, 2015

/asl/

Alexander S. Lazouski
Lazouski IP LLC
14726 Bowfin Ter., Suite 1
Lakewood Ranch 34202, FL
(201) 645-5616

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**THE ULTIMATE SPEAKER PERFORMANCE, QUALITY
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Phone 303-671-8900



From: Alex | PPLUSMARKETING <alex@pplusmarketing.com>

To: Ross D. Bulla (Treadstone) <bulla@treadstonegroup.com>

Cc:

Date: Wednesday, March 11, 2015 11:58 am

Subject: Re: Alex, Ref: H2COCO

Attachments:

No worries.

Thanks,

Alex

On Mar 11, 2015 5:08 AM, "Ross D. Bulla (Treadstone)" <bulla@treadstonegroup.com> wrote:

Alex, I'm discussing your response with my client, but one decision-maker is on vacation. It might be a week or two, before I can revert.

Ross

-----Original Message-----

From: Alex | PPLUSMARKETING [mailto:alex@pplusmarketing.com]

Sent: Monday, March 9, 2015 06:06 PM

To: 'Ross D. Bulla (Treadstone)'

Subject: Re: Alex

Dear Mr. Bulla

Thank you for your interest in our k2coco brand. I'm open to selling anything I own provided the right price is tendered. We are still in the midst of finalizing our product launch as it is one of several we have already launched with plenty of success. We have purchased brands in the past and we too value roar brands based on several factors some of which you touched upon. One of the factors that we like to consider first and foremost is what has the brand owner spent to that point on the brand. This is just to give us an idea on a starting point for discussion. I'm sure you are very familiar with the costs of filing trademarks, designing brands, creating logos, researching the product category, etcetera. Your offer price is well below the costs that we have spent on this project to date. There is always interest in buying or selling something as far as my company is concerned, however we do require that we make a nice profit for doing so. If your client is truly interested in this brand, I would suggest doing a little bit more research on the category and submitting an offer that we can consider.

Thanks,

Alex

On Mar 9, 2015 4:41 AM, "Ross D. Bulla (Treadstone)" <bulla@treadstonegroup.com> wrote:

> Alex,
>
> Please refer to the attachment, regarding your trademark, H2COCO.
>
> Sincerely,
>
> ROSS D. BULLA
> President | The Treadstone Group, Inc.
> O:(704)489-8663 | M:(704)740-7658
>
> Visit our booth (#1524) during the INTA Annual Meeting in San Diego, May
> 3-6, 2015. We are an Official Sponsor.
>
> The Treadstone Group, Inc. is trusted most for comprehensive fact-finding
> that enables the world's largest brand owners and their law firms to clear,
> cancel, oppose, defend, or acquire trademarks, and to recover or acquire
> domain names. Our multinational clients operate in every sector of the
> economy and across nearly all industries.
>

Trademark/Service Mark Statement of Use (15 U.S.C. Section 1051(d))

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85503125
LAW OFFICE ASSIGNED	LAW OFFICE 111
EXTENSION OF USE	NO
MARK SECTION	
MARK	http://tess2.uspto.gov/ImageAgent/ImageAgentProxy?getImage=85503125
LITERAL ELEMENT	H2COCO
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
OWNER SECTION	
NAME	PERFORMANCE PLUS MARKETING, INC.
STREET	5560 EAST 61ST STREET
CITY	COMMERCE
STATE	California
ZIP/POSTAL CODE	90040
COUNTRY	United States
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	032

Exhibit 4

CURRENT IDENTIFICATION	Carbonated drinking waters, flavored waters, and other non-alcoholic beverages, namely, sports drinks, energy drinks, fruit drinks, vegetable drinks, all made in whole or substantial part of coconut
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	12/04/2012
FIRST USE IN COMMERCE DATE	12/04/2012
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT 16\855\031\85503125\xml9\SOU0002.JPG
SPECIMEN DESCRIPTION	Photograph of the goods.
REQUEST TO DIVIDE	NO
PAYMENT SECTION	
NUMBER OF CLASSES IN USE	1
SUBTOTAL AMOUNT [ALLEGATION OF USE FEE]	100
TOTAL AMOUNT	100
SIGNATURE SECTION	
DECLARATION SIGNATURE	/almuntasser hbaiu/
SIGNATORY'S NAME	ALMUNTASSER "ALEX" HBAIU
SIGNATORY'S POSITION	President and CEO
DATE SIGNED	01/14/2013
SIGNATORY'S PHONE NUMBER	8889425350
FILING INFORMATION	
SUBMIT DATE	Mon Jan 14 12:52:34 EST 2013
TEAS STAMP	USPTO/SOU-XX.XX.XXX.XXX-2 0130114125234142721-85503 125-490f442b7bed84bf44cb2 de9a8af4a137-CC-11365-201

Exhibit 4

30114121950472610

Trademark/Service Mark Statement of Use (15 U.S.C. Section 1051(d))

To the Commissioner for Trademarks:

MARK: H2COCO(Standard Characters, see

<http://tess2.uspto.gov/ImageAgent/ImageAgentProxy?getImage=85503125>)

SERIAL NUMBER: 85503125

The applicant, PERFORMANCE PLUS MARKETING, INC., having an address of
5560 EAST 61ST STREET
COMMERCE, California 90040
United States

is submitting the following allegation of use information:

For International Class 032:

Current identification: Carbonated drinking waters, flavored waters, and other non-alcoholic beverages, namely, sports drinks, energy drinks, fruit drinks, vegetable drinks, all made in whole or substantial part of coconut

The mark is in use in commerce on or in connection with all of the goods/services, or to indicate membership in the collective organization listed in the application or Notice of Allowance or as subsequently modified for this specific class.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 12/04/2012, and first used in commerce at least as early as 12/04/2012, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) Photograph of the goods..

[Specimen File1](#)

The applicant is not filing a Request to Divide with this Allegation of Use form.

A fee payment in the amount of \$100 will be submitted with the form, representing payment for the allegation of use for 1 class.

Declaration

Applicant requests registration of the above-identified trademark/service mark 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). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the

attached specimen(s) showing the mark as used in commerce.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the form or any resulting registration, declares that he/she is properly authorized to execute this form on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /almuntasser hbaiu/ Date Signed: 01/14/2013

Signatory's Name: ALMUNTASSER "ALEX" HBAIU

Signatory's Position: President and CEO

Signatory's Phone: 8889425350

RAM Sale Number: 11365

RAM Accounting Date: 01/14/2013

Serial Number: 85503125

Internet Transmission Date: Mon Jan 14 12:52:34 EST 2013

TEAS Stamp: USPTO/SOU-XX.XX.XXX.XXX-2013011412523414

2721-85503125-490f442b7bed84bf44cb2de9a8

af4a137-CC-11365-20130114121950472610



Exhibit 4

FEE RECORD SHEET

Serial Number: 85503125



RAM Sale Number: 11365

Total Fees: \$100

RAM Accounting Date: 20130114

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Total Fee</u>
Statement of Use (SOU)	7003	20130114	\$100	1	\$100

Transaction Date: 20130114

