

ESTTA Tracking number: **ESTTA744056**

Filing date: **05/03/2016**

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 parties request to cancel indicated registration.

Petitioner Information

Name	EVALTEC, LLC		
Entity	Limited Liability Company	Citizenship	Mississippi
Address	274 Commerce Park Drive Suite M Ridgeland, MS 39157 UNITED STATES		

Name	SKYHAWKE TECHNOLOGIES, LLC		
Entity	Limited Liability Company	Citizenship	Mississippi
Address	274 Commerce Park Drive Suite M Ridgeland, MS 39157 UNITED STATES		

Attorney information	Christopher I. Donahue Oblon, McClelland, Maier & Neustadt, L.L.P. 1940 Duke Street Alexandria, VA 22314 UNITED STATES tmdocket@oblon.com Phone:703-413-3000		
----------------------	---	--	--

Registration Subject to Cancellation

Registration No	3956063	Registration date	05/03/2011
Registrant	Adams Golf IP, LP. 2801 East Plano Parkway Plano, TX 75074 UNITED STATES		

Goods/Services Subject to Cancellation

Class 028. First Use: 2011/01/15 First Use In Commerce: 2011/01/15 All goods and services in the class are cancelled, namely: Golf bags
--

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
--------------------------------------	---------------------------------------

Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3090545	Application Date	08/03/2000
Registration Date	05/09/2006	Foreign Priority Date	NONE

Word Mark	SKYHAWKE
Design Mark	SKYHAWKE
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2005/07/12 First Use In Commerce: 2005/07/12 Computer system comprised of computer software and hardware for displaying graphs and charts and for the collection of statistical data and calculation and determination of distances for use in the sports and recreational industries and downloadable software for use in connection therewith

Attachments	76104006#TMSN.png(bytes) SKYHAWK_Petition.pdf(115317 bytes) exhibit A-skyhawke cancellation.pdf(203756 bytes)
-------------	---

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	/cid/
Name	Christopher I. Donahue
Date	05/03/2016

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

EVALTEC, LLC and)	
SKYHAWKE TECHNOLOGIES, LLC,)	
Petitioners,)	
v.)	Cancellation No. _____
ADAMS GOLF IP, LP,)	Mark: SKYHAWK
Respondent.)	Reg. No. 3,956,063

PETITION FOR CANCELLATION

Petitioner, Evaltec, LLC (“Evaltec”), a limited liability company organized under the laws of Mississippi, located at 274 Commerce Park Drive, Suite M, Ridgeland, MS 39157 SkyHawke Technologies, LLC (“SkyHawke”), a limited liability company organized under the laws of Mississippi, located at 274 Commerce Park Drive, Suite M, Ridgeland, MS 39157, (hereinafter collectively “Petitioners”) believe that they are or will be damaged by the continued registration of the mark identified above and hereby petition to cancel the registration.

Count I – Likelihood of Confusion
15 U.S.C. § 1052(d) and 1064(l)

As grounds for this Petition, Petitioners allege:

1. Respondent, Adams Golf IP, LP filed an application to register SKYHAWK on July 13, 2010. Respondent’s application was assigned Application Serial No. 85/083,220. Registration for this application issued on May 3, 2011 under Registration No. 3,956,063 claiming dates of first use and first use in commerce to be January 15, 2011.

2. Petitioner Evaltec is the owner of, and Petitioner Skyhawke is the exclusive licensee of, and will rely herein, upon the following federal mark and registration(s):

<u>MARK</u>	<u>REGISTRATION NO(S).</u>	<u>ISSUED</u>
SKYHAWKE	3,090,545	May 9, 2006

Printed information from the TARR and Assignment electronic databases of the USPTO showing the current status and title of this Registration is attached as Exhibit A and incorporated herein by reference. Registration No. 3,090,545 is valid and subsisting.

3. Prior to any date of first use or first use in commerce that could be claimed by Respondent for the mark shown in U.S. Registration No. 3,956,063 (hereinafter “the Registration”), Petitioners have extensively used, advertised and promoted the Mark SKYHAWKE in connection with computer systems comprised of software and hardware for displaying graphics and charts and for the collection of statistical data for the distribution of distances for use in the sports and recreational industries and downloadable software for use in connection therewith (“Petitioner’s Goods”).

4. Petitioners also own common law rights in the mark SKYHAWKE which Petitioners have used extensively in interstate commerce in connection with Petitioners’ Goods. Petitioners commenced use of the SKYHAWKE Mark long prior to any date of first use or first use in commerce that could be claimed by Respondent and continue to use the SKYHAWKE Mark in interstate commerce through the present date.

5. Since approximately 2005, Petitioners have been distributing and selling Petitioners’ Goods under the mark SKYHAWKE in interstate commerce throughout the United States.

6. Petitioners have expended substantial resources in advertising, promoting and marketing Petitioners' Goods under Petitioners' SKYHAWKE Mark in interstate commerce throughout the United States.

7. By virtue of their substantially exclusive and continuous use in interstate commerce by Petitioners of Petitioners' SKYHAWKE Mark for Petitioners' Goods, Petitioners' Mark has enjoyed wide recognition and identification with Petitioner throughout the United States.

8. Upon information and belief, notwithstanding Petitioners' prior rights in and to Petitioners' SKYHAWKE Mark, on July 13, 2010, Respondent filed Application Serial No. 86/083,220 for the designation SKYHAWK ("Respondent's Mark") for golf bags in International Class 28 ("Respondent's Goods"), which issued as U.S. Reg. 3,956,063 on May 3, 2011.

9. Respondent's Mark is a simulation and colorable imitation of, and so resembles Petitioners' Mark as to be likely, when used in connection with Respondent's Goods to cause confusion or mistake, or to deceive purchasers resulting in damage and detriment to Petitioners, their reputation and Petitioners' SKYHAWKE Mark. In addition, Respondent's Mark is likely to falsely suggest that Respondent's Goods have been approved or sponsored by Petitioners or that Respondent's Goods are otherwise associated with, endorsed by, or emanate from Petitioners.

10. Respondent's Mark is identical to and/or confusingly similar to Petitioners' Mark.

11. Respondent has no connection whatsoever with Petitioners, and Petitioners have not authorized or licensed Respondent to use the identical and/or confusingly similar designation SKYHAWK for Respondent's Goods.

12. Respondent's use and registration of Respondent's Mark in connection with Respondent's Goods is such that members of the public will mistakenly assume that Respondent's Mark and Respondent's Goods emanate from Petitioners.

13. Respondent's Mark so closely resembles Petitioners' SKYHAWKE Mark that its use, in connection with Respondent's Goods, is likely to cause confusion, or to cause mistake or to deceive the relevant consuming public, including Petitioners' customers, in violation of Sections 2(d) and 14(l) of the Trademark Act, 15 U.S.C. §§ 1052 (d) and 1064(l). Purchasers and potential purchasers of Respondent's Goods likely will mistakenly believe that Petitioners are somehow affiliated with, or endorse Respondent's use of Respondent's Mark when Petitioners are not connected in any way with Respondent or the use of Respondent's Mark.

14. Respondent's Mark so resembles Petitioners' SKYHAWKE Mark that the use and registration thereof is likely to cause confusion, mistake and deception as to the source or origin of Respondent's Goods and will injure and damage Petitioners, Petitioners' business, Petitioners' reputation, and the goodwill and reputation symbolized by Petitioners' SKYHAWKE Mark.

15. Respondent's Goods are the same as, identical to, and/or closely related to Petitioners' Goods such that the public is likely to be confused, to be deceived, and to assume erroneously that Respondent's Goods are those of Petitioners or that Respondent is in some way connected with, sponsored by, affiliated with or endorsed by Petitioners.

16. Petitioners' Goods and Respondent's Goods are and will be rendered in close proximity, will be advertised, promoted and sold in the same channels of trade, and will be purchased and consumed by the same general classes of purchasers.

17. The continued registration of Respondent's Mark will be in violation of Petitioners' prior and superior rights in Petitioners' SKYHAWKE Mark, will be damaging to

Petitioner and Petitioners' SKYHAWKE Mark, and will violate 15 U.S.C. §§ 1052(d) and 1064(l).

WHEREFORE, Petitioners request that this Petition for Cancellation be granted, that judgment be entered in favor of Petitioners, and that Registration No. 3,956,063 be cancelled.

Petitioners have appointed CHRISTOPHER I. DONAHUE, a member of the law firm of OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, L.L.P., a member of the Bar of the Commonwealth of Virginia, to prosecute this cancellation proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith.

Please address all correspondence to:

CHRISTOPHER I. DONAHUE
OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.
1940 Duke Street
Alexandria, Virginia 22314

We attach our credit card payment form for the required filing fee for this Petition. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 50-2014.

Respectfully submitted,

EVALTEC, LLC and
SKYHAWKE TECHNOLOGIES, LLC

By: /Christopher I. Donahue/
Christopher I. Donahue
OBLON, SPIVAK, MCCLELLAND,
MAIER & NEUSTADT, L.L.P.
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
fax (703) 413-2220
e-mail: tmdocket@oblon.com
Attorneys for Petitioners

Dated: May 3, 2016
CID/mjo {14697192.1}

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **PETITION FOR CANCELLATION** was served on Respondent, as identified by the records of the U.S. Patent and Trademark Office, this 3rd day of May, 2016, by sending same via First Class mail, postage prepaid, to:

Adams Golf IP, LP
2801 East Plano Parkway
Plano, Texas 75074

(972) 673-9790
(805) 614-9287 (fax)

/Christopher I. Donahue/
Christopher I. Donahue



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue May 3 03:21:40 EDT 2016

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (*Use the "Back" button of the Internet Browser to return to TESS*)

SKYHAWKE

Word Mark SKYHAWKE

Goods and Services IC 009. US 021 023 026 036 038. G & S: Computer system comprised of computer software and hardware for displaying graphs and charts and for the collection of statistical data and calculation and determination of distances for use in the sports and recreational industries and downloadable software for use in connection therewith. FIRST USE: 20050712. FIRST USE IN COMMERCE: 20050712

Mark Drawing Code (1) TYPED DRAWING

Serial Number 76104006

Filing Date August 3, 2000

Current Basis 1A

Original Filing Basis 1B

Published for Opposition April 20, 2004

Registration Number 3090545

Registration Date May 9, 2006

Owner (REGISTRANT) EVALTEC, LLC LIMITED LIABILITY COMPANY MISSISSIPPI 274 Commerce Park Drive, Suite D Ridgeland MISSISSIPPI 39157

Attorney of Record Jordan S. Weinstein, Esquire

Type of TRADEMARK

Mark
Register PRINCIPAL
Affidavit Text SECT 8 (6-YR).
Live/Dead Indicator LIVE

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [TOP](#) [HELP](#)

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

On May 6, 2016 TSDR will update the XML schema from version ST-96 1_D3 to version ST-96 2.2.1. Consequently, 3rd party applications that utilize TSDR XML may not function as intended after that date. Therefore, the USPTO will make available the current XML schema at the following link: https://tsdrsec.uspto.gov/ts/cd/casestatus/SERIAL_OR_REG_NUMBER/v1/info.xml for a period of not less than 6 months. Any 3rd party applications that currently make calls to USPTO XML should be changed to point to that link. It is highly recommended that 3rd party applications be upgraded to utilize the USPTO API's rather than the XML schema, which may change at any time rendering the 3rd party application inoperable. The link to the current API is https://tsdrapi.uspto.gov/ts/cd/casestatus/SERIAL_OR_REG_NUMBER/info.xml. Questions may be directed to [the TSDR Mailbox](#).

STATUS **DOCUMENTS** **MAINTENANCE**

[Back to Search](#)

Print

Generated on: This page was generated by TSDR on 2016-05-03 13:50:39 EDT

Mark: SKYHAWKE

SKYHAWKE

US Serial Number: 76104006

Application Filing Date: Aug. 03, 2006

US Registration Number: 3090545

Registration Date: May 09, 2006

Register: Principal

Mark Type: Trademark

Status: A Section 8 declaration has been accepted.

Status Date: Dec. 10, 2012

Publication Date: Apr. 20, 2004

Notice of Allowance Date: Jul. 13, 2004

Mark Information

Mark Literal Elements: SKYHAWKE

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Computer system comprised of computer software and hardware for displaying graphs and chart data and calculation and determination of distances for use in the sports and recreational industry use in connection therewith

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 12, 2005

Use in Commerce: Jul. 12, 2005

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44D: No

Filed 44E: No

Currently 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: EVALTEC, LLC

Owner Address: 274 Commerce Park Drive, Suite D
Ridgeland, MISSISSIPPI UNITED STATES 39157

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: MISSISSIPPI

Attorney/Correspondence Information

Prosecution History

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

TM Staff and Location Information

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load