

ESTTA Tracking number: **ESTTA793189**

Filing date: **01/05/2017**

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	Serious Scents Inc.		
Entity	Corporation	Citizenship	California
Address	P.O.Box 5626 Chula Vista, CA 91912 UNITED STATES		

Correspondence information	Ibrahim Nasser President Serious Scents Inc. P.O.Box 5626 Chula Vista, CA 91912 UNITED STATES balweh@hotmail.com
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Registration Subject to Cancellation

Registration No	4890647	Registration date	01/19/2016
Registrant	American Covers, Inc. 102 West 12200 South Draper, UT 84020 UNITED STATES		

Goods/Services Subject to Cancellation


Class 003. First Use: 2012/07/28 First Use In Commerce: 2012/07/28
All goods and services in the class are cancelled, namely: Air Fresheners for air fragrancing purposes

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Dilution by blurring	Trademark Act Sections 14(1) and 43(c)
Dilution by tarnishment	Trademark Act Sections 14(1) and 43(c)


Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3508401	Application Date	02/29/2008
Registration Date	09/30/2008	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1993/10/31 First Use In Commerce: 1993/10/31 air fresheners

U.S. Application No.	85641084	Application Date	06/01/2012
Registration Date	NONE	Foreign Priority Date	NONE


Word Mark	NONE
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Design Mark	
Description of	The mark consists of the design of a grenade.

Mark	
Goods/Services	Class 003. First use: First Use: 1993/10/31 First Use In Commerce: 1993/10/31 air fragrancing preparations Class 005. First use: First Use: 1993/10/31 First Use In Commerce: 1993/10/31 air deodorizing preparations

U.S. Application No.	86328012	Application Date	07/03/2014
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	SERIOUS SCENTS
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Design Mark	
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Description of Mark	The mark consists of a depiction of a grenade with a ring pull at the top with the words SERIOUS SCENTS written across the middle of the grenade.
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Goods/Services	Class 003. First use: First Use: 1993/10/31 First Use In Commerce: 1993/10/31 Air fragrancing preparations Class 005. First use: First Use: 1993/10/31 First Use In Commerce: 1993/10/31 Air deodorizer; Air deodorizing preparations
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Attachments	77410038#TMSN.png(bytes) 85641084#TMSN.png(bytes) 86328012#TMSN.png(bytes) FILED AND FEE.pdf(998145 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	/Ibrahim Nasser/
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Name	Ibrahim Nasser
Date	01/05/2017

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

Date: January 5, 2017

In re Registration of : American Covers Inc.

Registration No. : 4,890,647

Registration Date : January 19, 2016



Mark:

IBRAHIM NASSER and
SERIOUS SCENTS, INC.,

Petitioner,

V.

American Covers, Inc.,

Respondent.

Cancellation No.: _____

Registration No.: 4,890,647

PETITION FOR CANCELLATION

Serious Scents, Inc. a corporation organized and existing under the laws of California with an address at P.O. Box 5626 Chula Vista, CA 91912 (“Petitioner”), by its undersigned Ibrahim Nasser president at Serious Scents Inc., respectfully submits the following Petition for Cancellation. Petitioner believes that it will be damaged by the continued registration of the above-identified mark, and hereby petitions for cancellation of such registration. The grounds for cancellation are as follows:

1. The owner of Registration No. 4,890,647 (the “Registration”) is American Covers, Inc. (“Respondent”), an individual with an address at 102 West 12200 South, Draper, UTAH 84020 UNITED STATES

2. The subject registration covers the mark depicted below (“Respondent’s Mark”) for “air fresheners” in International Class 5, and claims a date of first use in commerce of July 28, 2012.



3. Respondent filed the application that resulted in the Registration on January 15, 2013. The Registration issued on January 19, 2016.

4. For over twenty three years since October 31, 1993 Mr. Ibrahim Nasser and his company Serious Scents Inc. was actively engaged in commerce, distributing and selling unique air-freshener in the Trademark design of a Grenade long before issuance of the Registration. Petitioner, its licensees, and its predecessors have manufactured and marketed products using its distinctive exclusive Grenade designs as a trademarks and corporate identifiers, including the distinct Grenade design shape sold under the **Little Grenade** brand directly and/or by license from Petitioner and its predecessors. As a result of their long and extensive sales across the United States, Petitioner’s products are well known and well received.

5. As a result of the long, extensive research, design and widespread use in the United States and sales of the distinctive Grenade designs, the general consuming public in the United States recognizes these designs as exclusively associated with Petitioner and his company.

6. The general consuming public associates Petitioner Ibrahim Nasser and the distinctive Grenade designs generally with the concepts of freshness, cleanliness and pleasing scents.

7. Petitioner’s distinctive Grenade designs are famous throughout the United States and Canada and Mexico.

Petitioner has owned the following federal trademark registrations for distinctive Grenade designs from 2008 before American Covers Inc. applied for their Application (collectively, the “Registrations”):

THE CRITICAL ISSUES IN THIS CASE ARE:

Whether Serious Scents Inc. prior use of the disputed Trademark in commerce was sufficient to earn it “*trademark rights*” *through first use rights*” and whether (and if so, to what extent) those rights legally trump the rights American Covers Inc. who later obtained use by registering the mark which the American Covers Inc. **ignored.**

US. Trade dress Copyright Office of United States # VA 619 -296

First Use Date

October 31, 1993

Mark Registration. No.: 3,508,401

Filed: 09-30-2008

First Use Date

October 31, 1993

Goods and Services

Class 005 air fresheners

Mark U.S. Pending Application No.: 85,641,084

Filed: June 1, 2012

October 31, 1993

3,508,401

First Use Date

October 31, 1993

Goods and Services

Class 005 air deodorizing

Class 003 air fragrancng

9. Pursuant to 15 U.S.C. § 1065.

10. Petitioner also has common law trademark rights to its Grenade Designs, which are used in daily commerce in connection with air fragrancng preparations and a variety of other goods and services. Petitioner's registered and common law trademark rights in the Grenade designs are collectively referred to as the "Grenade Design Marks."

11. The Grenade Design Marks are used extensively on a wide variety of air fresheners and related products offered in a variety of different fragrances. Petitioner has spent, and continues to spend, significant amounts of time and money developing, testing and promoting air fresheners sold under the Grenade Design Marks in this case, the following factors are the most relevant: the remarkable similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services.

12. The Grenade Design Marks are famous under 15 U.S.C. § 1125(c)(1), and acquired such fame well prior to the filing date and alleged first use date of the Registration. The Grenade Design Marks are inherently distinctive and/or have acquired distinctiveness, represent valuable with respect to air fresheners, in International Class 5. Distributors, car washes have gained a reputation for quality belonging exclusively to Petitioner, and are widely recognized by the general consuming public of the United States as designations of the source for Petitioner's products.

13. Petitioner's rights in the Grenade Design Marks date back to at least as early as October 31, 1993, as partially evidenced by the Registrations, and therefore predate Respondent's alleged first use date July 28, 2012. Accordingly, Petitioner has superior rights in its Grenade Design Marks.

14. Respondent's Mark is confusingly similar to Petitioner's Grenade Design Marks. " Between the Mark of a Grenade Serious Scents, Inc. And Trademark Grenade American Covers Inc. This matter can be quickly addressed and cleared up with the application of the history of the "*Grenade Trademark*." This Trademark of a Grenade was first created and used by Serious Scents Inc.12-08-1993. Serious Scents Inc. Enjoys protection of "*first use claims*" stating in 1993 US. Copy right Office of United States # VA 619 -296 LITTLE GRENADE "SERIOUS SCENTS " for first commercial use of "*Grenade Image*" used as an air freshener. Each party provides goods for freshening and fragrancng the air. The Registration is a significant source of damage and injury to Petitioner, for the reasons set forth below

15. Respondent's Mark is confusingly similar in appearance to Petitioner's Grenade Design Marks. This is evidenced by, *inter alia*, the Design Search Codes assigned by the

United States Patent and Trademark Office to Respondent's Registration, which include Grenade shapes, namely Design Code 23.03.09 – Grenades as depicted below.



16. Upon information and belief, Respondent adopted Respondent's Mark with full knowledge of Petitioner's rights in the Grenade Design Marks, and with the intent to trade off the hard-earned and far-reaching goodwill that Petitioner has cultivated in the Grenade Design Marks for over twenty-three years.

17. Respondent's Mark is likely to cause confusion with Petitioner's Grenade Design Marks among the trade and the relevant purchasing public. Use of Respondent's Mark is likely to deceive consumers and the trade into believing that Respondent's products are affiliated with, sponsored by, or licensed by Petitioner. Such confusion and deception inevitably results in loss, damage, and injury to Petitioner.

18. Use of Respondent's Mark in conjunction with air fresheners dilutes the distinctive quality of Petitioner's Grenade Design Marks, thereby causing damage to Petitioner.

19. American Covers Inc. Trademark is continuously in violation of the trademark law by its knowing and willing infringement on Mr. Nasser's Trademarks which it knew or should have known had rights of protection. Trademark Act Section 2(d) bars registration of an *applied-for mark* that *so resembles a registered mark* that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. This perfectly describes the intentional acts and actions of American Covers Inc. Trademark violations. By reason of the foregoing, the

Registration causes significant damage and injury to Petitioner. Thus, the Registration should be cancelled pursuant to Sections 2(d) and 43(c) of the Trademark Act (15 U.S.C. §§ 1052(d) and 1125(c)).

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained in favor of Petitioner, and that Registration No. 4,890,647 be cancelled.

Dated: January 5, 2017

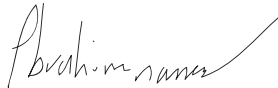
Respectfully submitted,
Ibrahim M. Nasser
President/Serious Scents Inc.
P.O.Box 5626
Chula Vista, CA 91912 Tel: (619) 253-9624
balweh@hotmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the *Petition for Cancellation* was served by first class mail, postage prepaid, upon Respondents' counsel of record on the 5 day of January 2017, at the following address:

American Covers Inc.
102 West 12200 South, Draper, UTAH 84020 UNITED STATES

Alicia Grahn Jones
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street NE Suite 2800
Atlanta, GEORGIA UNITED STATES 30309



Ibrahim M. Nasser
