

ESTTA Tracking number: **ESTTA882170**

Filing date: **03/09/2018**

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 has filed a petition to cancel the registration indicated below.

Petitioner Information

| | | | |
|---------|---|-------------|----------|
| Name | Pure Storage, Inc. | | |
| Entity | Corporation | Citizenship | Delaware |
| Address | 650 Castro Street, #400 Mountain View, CA 94041 UNITED STATES | | |

| | |
|----------------------|--|
| Attorney information | Nate A. Garhart Cobalt LLP 1912 Bonita Avenue Berkeley, CA 94704 UNITED STATES Email: trademarks@cobaltlaw.com Phone: 510-841-9800 |
|----------------------|--|

Registration Subject to Cancellation

| | | | |
|------------------|---|-------------------|------------|
| Registration No. | 5156080 | Registration date | 03/07/2017 |
| Registrant | Insight Energy Ventures LLC 333 W 7TH ST. #200 ROYAL OAK, MI 48067 UNITED STATES | | |


Goods/Services Subject to Cancellation

| |
|---|
| Class 009. First Use: 2016/04/11 First Use In Commerce: 2016/04/11 All goods and services in the class are subject to cancellation, namely: Computer application software for mobile phones, desk and laptop computers, handheld computers, devices and tablets, namely, software for tracking, monitoring, reporting on, evaluating, analyzing, managing, and providing feedback, insights, and suggestions on home energy consumption and conservation; Computer hardware and peripheral devices |
| Class 042. First Use: 2016/04/11 First Use In Commerce: 2016/04/11 All goods and services in the class are subject to cancellation, namely: Design and development of software and hardware for for home and commercial energy management for tracking, monitoring, reporting on, evaluating, analyzing, managing, and providing feedback, insights, suggestions, advice, and guidance on home energy consumption and conservation |


Grounds for Cancellation

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

Marks Cited by Petitioner as Basis for Cancellation

| | | | |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 4165143 | Application Date | 08/19/2010 |
| Registration Date | 06/26/2012 | Foreign Priority Date | NONE |
| Word Mark | P | | |
| Design Mark |  | | |
| Description of Mark | The mark consists of stylized Hexagon "P". | | |
| Goods/Services | Class 009. First use: First Use: 2011/08/01 First Use In Commerce: 2011/08/01 flash memory array | | |

| | | | |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 4436830 | Application Date | 08/19/2010 |
| Registration Date | 11/19/2013 | Foreign Priority Date | NONE |
| Word Mark | P | | |

| | |
|---------------------|---|
| Design Mark |  |
| Description of Mark | The mark consists of Stylized Hexagon P. |
| Goods/Services | Class 037. First use: First Use: 2011/08/01 First Use In Commerce: 2011/08/01 Installation, maintenance and repair of computer hardware; technical support services, namely, troubleshooting in the nature of the repair of computer hardware |

| | |
|-------------|---|
| Attachments | 85111683#TMSN.png(bytes) 85111687#TMSN.png(bytes) P Stylized Powerley Notice of Cancellation.pdf(193187 bytes) |
|-------------|---|

| | |
|-----------|-------------------|
| Signature | /Nate A. Garhart/ |
| Name | Nate A. Garhart |
| Date | 03/09/2018 |

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

In the matter of Trademark Registration

Reg. No.: 5156080
Registered: March 7, 2017
By: Insight Energy Ventures LLC dba Powerley
For the Trademark: P (Stylized)

Pure Storage, Inc.

Petitioner,

v.

Insight Energy Ventures LLC dba
Powerley,

Respondent.

Cancellation No.

PETITION TO CANCEL

Pure Storage, Inc. (“Pure Storage” or “Petitioner”) believes that it is and will continue to be damaged by the continued registration of the P (Stylized) mark, owned by Insight Energy Ventures LLC d/b/a Powerley (“Registrant” or “Powerley”), for “Computer application software for mobile phones, desk and laptop computers, handheld computers, devices and tablets, namely, software for tracking, monitoring, reporting on, evaluating, analyzing, managing, and providing feedback, insights, and suggestions on home energy consumption and conservation; Computer hardware and peripheral devices” in International Class 009, and “Design and development of software and hardware for home and commercial energy management for tracking, monitoring, reporting on, evaluating, analyzing, managing, and providing feedback, insights, suggestions, advice, and guidance on home energy consumption and conservation” in International Class 042,

as listed in Registration No. 5156080, and hereby petitions to cancel same. As grounds for its cancellation, Petitioner alleges as follows:

I. PARTIES

1. Pure Storage, Inc. is a Delaware corporation, with its principal place of business at 650 Castro Street #400, Mountain View, California UNITED STATES 94041.

2. On information and belief, Registrant is a Michigan limited liability company with its principal place of business at 333 W 7th Street #200, Royal Oak, Michigan UNITED STATES 48067.

II. FACTUAL BACKGROUND

4. Petitioner is owner of Registration No. 4165143 for the mark P (Stylized), filed August 19, 2010 and registered June 26, 2012, for “Flash memory array” in Class 09 and Registration No. 4436830 for the mark P (Stylized), filed August 19, 2010 and registered November 19, 2013, for “Installation, maintenance and repair of computer hardware; technical support services, namely, troubleshooting in the nature of the repair of computer hardware” (collectively, “Petitioner’s Marks”), both claiming a date of first use of August 1, 2011.

5. On information and belief, Registrant is owner of Registration No. 5156080, filed August 2, 2016 and registered March 7, 2017, for the mark P (Stylized) for “Computer application software for mobile phones, desk and laptop computers, handheld computers, devices and tablets, namely, software for tracking, monitoring, reporting on, evaluating, analyzing, managing, and providing feedback, insights, and suggestions on home energy consumption and conservation; Computer hardware and peripheral devices” in Class 009, and “Design and development of software and hardware for home and commercial energy management for tracking, monitoring, reporting on, evaluating, analyzing, managing, and providing feedback, insights, suggestions, advice, and guidance on home energy consumption and conservation” in Class 042 (“Registrant’s Mark”), both classes claiming a date of first use of April 11, 2016.

III. GROUNDS FOR CANCELLATION


PRIOR USE OF A SIMILAR MARK (Lanham Act §2(d))

6. Petitioner hereby incorporates by reference paragraphs 1 through 5 above as though fully set forth herein.

7. Petitioner's Marks have been in use in interstate commerce continuously since at least as early as August 1, 2011.


8. On information and belief, Registrant had actual knowledge of Petitioner's Marks at the time of the filing of Registrant's Mark.

9. Registrant's Mark is confusingly similar to Petitioner's Marks when applied to the goods and/or services of the parties, namely, among others, "computer hardware and peripheral devices."

10. Registrant's Mark, , which Registrant describes as a "stylized symbol geometrically shaped like the letter 'P'," and in which orange is claimed as a feature of the mark, is nearly identical to Petitioner's Marks.

11. Petitioner's Marks are described in its registrations as a "Stylized Hexagon P."

12. Petitioner's Marks are not limited to one color—color is not claimed as a feature of the mark—and thus Petitioner's rights extend to all similar marks regardless of color.

13. That said, the color of Registrant's Mark is relevant, as Petitioner's Marks as used have always been orange, as evidenced on its website and other marketing materials. Specifically, Petitioner's Marks as used specifically appear as  incorporating the very same color as that of Registrant's Mark, orange. The striking similarities between Registrant's Mark and Petitioner's Marks are clear and the marks create the same commercial impression.

14. Petitioner's goods and services and Registrant's goods and services are identical in part, and related in part, and Registrant's registration of Registrant's Mark was filed without the consent or permission of Petitioner.

15. Mistake or deception as to source of origin of the goods and services of either party is likely to occur, and since Petitioner owns Petitioner's Marks and rights senior to those of Registrant, such mistake will injure and damage Petitioner and its goodwill.

16. The continued registration of Registrant's Mark will cause the relevant purchasing public to erroneously assume, and thus be confused, misled, or deceived, into believing that Registrant's goods and services are offered by, licensed by, controlled by, sponsored by, or in some way connected to, related to, and/or associated with Petitioner, all to Petitioner's irreparable damage.

17. Petitioner believes that it is and will be damaged by the continued registration of Registrant's Mark P (Stylized).

18. Upon information and belief, service is proper upon Registrant as follows:

Daniel H. Bliss
Howard & Howard Attorneys PLLC
450 West Fourth Street
Royal Oak, Michigan 48067

WHEREFORE, Petitioner prays that Registration No. 5156080 be cancelled. The Petition to Cancel fee in the sum of \$800.00, pursuant to 37 C.F.R. §2.6(a)(16), has been electronically tendered from the Cobalt LLP deposit account, No. 503214.

Respectfully Submitted,

COBALT LLP

Date: March 9, 2018

By: /s/ Nate A. Garhart

Nate A. Garhart
Tsan Abrahamson
Travis Manfredi
Attorneys for Petitioner

COBALT LLP
1912 BONITA AVENUE
BERKELEY, CALIFORNIA 94704
TEL: 510.841.9800
FAX: 510.295.2401
E-MAIL: TRADEMARKS@COBALTLAW.COM

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 9, 2018, a true and correct copy of the foregoing Petition to Cancel was deposited in a U.S. Mailbox to be served upon Respondent by U.S. First Class Mail in an envelope, postage pre-paid, addressed to each party below as follows:

Insight Energy Ventures LLC
333 W. 7th St. #200
Royal Oak, Michigan 48067

Daniel H. Bliss, Esq.
Howard & Howard Attorneys PLLC
450 West Fourth Street
Royal Oak, Michigan 48067

/s/Gregory Soltys

GREGORY SOLTYS