

ESTTA Tracking number: **ESTTA890373**Filing date: **04/16/2018**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	Handshake Trading Oy		
Entity	Limited Company	Citizenship	Finland
Address	Alasintie 9 FI-90400 Oulu, - FINLAND		

Attorney information	Rebecca Gan WENDEROTH LLP 1030 15th Street, NW, Suite 400 East Washington, DC 20005 UNITED STATES Email: wlp@wenderoth.com, rgan@wenderoth.com, cemonid@wenderoth.com Phone: 202-721-8227
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Registration Subject to Cancellation

Registration No.	4983433	Registration date	06/21/2016
International Registration No.	NONE	International Registration Date	NONE
Registrant	Endura Ltd 16 Grange Road Houston Industrial Estate Livingston, EH545DE UNITED KINGDOM		

Goods/Services Subject to Cancellation

Class 009. First Use: 2014/01/20 First Use In Commerce: 2014/01/20
Goods and services in the class that are subject to cancellation: (Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
Other	Trademark Act Section 14(1)

Attachments	Petition for Cancellation - LUMINITE - 4983433.pdf(282193 bytes)
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Signature	/rgan/
Name	Rebecca Gan
Date	04/16/2018

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

HANDSHAKE TRADING OY,

Petitioner,

v.

ENDURA LTD,

Respondent.

Cancellation No. _____

Registration No. 4,983,433

Mark: **LUMINITE**

PETITION FOR PARTIAL CANCELLATION

Handshake Trading Oy (hereinafter referred to as the “Petitioner”), is a *limited company* duly organized in *Finland*, with its principal place of business located at: Alasintie 9, FI-90400 Oulu, Finland.

Endura Ltd (hereinafter referred to as the “Respondent”), is a *limited liability company* duly organized in the *United Kingdom*, with its principal place of business located at: 16 Grange Road, Houston Industrial Estate, Livingston EH54 5DE, United Kingdom.

Petitioner believes that it is and will continue to be damaged by the continued registration of U.S. Trademark Registration No. 4,983,433 for the mark “LUMINITE” in standard characters, for “(Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use,” in International Class 09 (hereinafter also referred to as the “Petitioned Mark”); and hereby petitions the Trademark Trial and Appeal Board to partially cancel the same.

In support of this Petition, Petitioner, through counsel, alleges as follows:

FACTUAL BACKGROUND

1. Petitioner is the owner of U.S. Trademark Application Serial No. 79/216,820 for the mark “LUMONITE” in standard characters, filed in the USPTO on June 27, 2017, for the following goods (as currently amended): “Outdoor portable lighting, namely, headlamps for mountaineering, orienteering, and adventure sports, not for use by cyclists,” in International Class 11. This U.S. application is an extension of protection of International Trademark Registration No. 1365895, under Section 66(a) of the Lanham Act, 15 U.S.C. § 1141e.
2. On November 8, 2017, Petitioner’s U.S. Trademark Application Serial No. 79/216,820 was issued a Final Office Action refusing its registration, due to a likelihood of confusion with U.S. Trademark Registration No. 4,983,433.
3. On January 31, 2018, Petitioner’s U.S. Trademark Application Serial No. 79/216,820 was issued a Request for Reconsideration denial letter, maintaining and continuing under final the likelihood of confusion refusal with U.S. Trademark Registration No. 4,983,433.
4. Petitioner is an internationally recognized developer, producer, distributor, and provider of portable light sources and car care products.
5. To the best of Petitioner’s knowledge, Respondent is the record owner of U.S. Trademark Registration No. 4,983,433 for the mark “LUMINITE” in standard characters, which is currently registered for the following goods: “(Based on 44(e)) Eyewear and sunglasses for sporting, fashion and recreational purposes; bags adapted for eyewear and sunglasses; lenses and frames for eyewear and sunglasses; personal reflectors for cyclists for road safety; reflective armbands for cyclists for protection against accident or injury; crash helmets for cyclists; protective headgear for use by cyclists for protection against accident and injury; tire pressure gauges; reflective armbands for cyclists containing LED lights for safety purposes; parts and fittings for

all the aforesaid; (Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use,” in International Class 9; “(Based on 44(e)) Bags adapted for carrying water bottles for bicycles; saddle bags for bicycles; pannier bags adapted for bicycles; front and rear bicycle rack packs; seat packs; tool bags adapted for bicycles sold empty; briefcases adapted for carriage by bicycles; handle bar bags for bicycles; bags adapted for bicycle wheels,” in International Class 12; “(Based on 44(e)) Luggage; tool bags sold empty for bicycles; courier bags; rucksacks; rucksacks for carrying water bottles or water pouches; parts and fittings for all the aforesaid,” in International Class 18; and “(Based on 44(e)) Articles of clothing for bicycling, namely, footwear and headwear for cyclists, arm warmers for cyclists, leg warmer for cyclists and body warmers for cyclists in the nature of vests for cyclists, bicycling tops, bicycling shorts, bicycling longs in the nature of long underwear, padded undershorts for cyclists, gloves, jackets, hooded jackets, gilets, jerseys, tops, shirts, T-shirts, base layers, trousers, over-trousers, shorts, suits, knickers, pants, underwear, fingerless gloves, socks, neckwear, neck warmers, namely, scarves, head bands, hoods, hats, caps, beanies, balaclavas, shoes and overshoes, all for cycling; (Based on Use in Commerce) (Based on 44(e)) Overshoes for cycling; women’s cycling jackets; men’s cycling jackets,” in International Class 25.

6. U.S. Trademark Registration No. 4,983,433 for “LUMINITE” in standard characters issued on June 21, 2016, and is based on actual use in U.S. commerce, and United Kingdom Trademark Registration No. 0107704113, under Sections 1(a) and 44(e) of the Lanham Act, 15 U.S.C. §§ 1051(a) and 1126(e), respectively.

COUNT ONE: NON-USE

7. Petitioner re-alleges and incorporates herein by reference the allegations in paragraphs 1-6 above, as if fully set forth herein.

8. As grounds for cancellation of the Petitioned Mark, Petitioner alleges, upon information and belief, that Respondent does not currently have bona fide use of the Petitioned Mark in the United States to support its original registration, in connection with “(Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use,” in International Class 09.

9. Upon opinion and belief, Respondent has never had bona fide use of the Petitioned Mark in the United States to support its original registration, in connection with “(Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use,” in International Class 09.

10. Accordingly, U.S. Trademark Registration No. 4,983,433 should be partially cancelled as to “(Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use,” in International Class 09, pursuant to TBMP § 307.02(a) and 15 U.S.C. § 1064(1).

COUNT TWO: ABANDONMENT

11. Petitioner re-alleges and incorporates herein by reference the allegations in paragraphs 1-10 above, as if fully set forth herein.

12. As grounds for cancellation of the Petitioned Mark, Petitioner alleges, upon information and belief, that Respondent has abandoned the Petitioned Mark for “(Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use,” in International Class 09.

13. Upon information and belief, Respondent never had any bona fide use of the Petitioned Mark in U.S. commerce in connection with “(Based on Use in Commerce) portable visibility

LED safety lighting for safety purposes and personal use,” in International Class 09, to support its original registration.

14. Upon information and belief, Respondent does not currently have any bona fide use of the Petitioned Mark in U.S. commerce in connection with “(Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use,” in International Class 09, to support its original registration.

15. Upon information and belief, Respondent has abandoned the Petitioned Mark, by not having bona fide use of the Petitioned Mark in U.S. commerce for at least three years, with no objective indicia of intent to begin bona fide use, in connection with “(Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use,” in International Class 09, and the Petitioned Mark has lost all capacity as a source indicator for Respondent’s referenced goods.

16. Accordingly, U.S. Trademark Registration No. 4,983,433 should be partially cancelled as to “(Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use,” in International Class 09, pursuant to TBMP § 307.01 and 15 U.S.C. § 1064(3).

CONCLUSION

17. Petitioner re-alleges and incorporates herein by reference the allegations in paragraphs 1-16 above as if fully set forth herein.

18. Petitioner has been damaged by the presumptions flowing from the continued registration of Respondent’s Petitioned Mark, as the Petitioned Mark has been cited as a bar to the registration of Petitioner’s mark.

19. The Petitioned Mark grants Respondent statutory rights, including the *prima facie* right, to the exclusive and continued use of “LUMINITE” in connection with “(Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use,” in International Class 09, all to the detriment of Petitioner. Accordingly, Petitioner believes that it is and will continue to be damaged by the continued registration of the Petitioned Mark in connection with “(Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use,” in International Class 09.

WHEREFORE, by the undersigned attorney, Petitioner respectfully requests that this Petition for Partial Cancellation be sustained in favor of Petitioner, and that U.S. Trademark Registration No. 4,983,433 be partially cancelled as to “(Based on Use in Commerce) portable visibility LED safety lighting for safety purposes and personal use,” in International Class 09, on the grounds of nonuse/abandonment with no intent to begin bona fide use.

Dated: April 16, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rh Gan', written over a horizontal line.

Rebecca Gan, Esq.
Attorney for Petitioner

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