

ESTTA Tracking number: **ESTTA902046**

Filing date: **06/08/2018**

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	Rodney Green		
Entity	Individual	Citizenship	UNITED STATES
Address	1832 FM 66 Waxahachie, TX 75167 UNITED STATES		

Correspondence information	Warren V. Norred Attorney 515 E. Border St. Arlington, TX 76010 UNITED STATES Email: wnorred@norredlaw.com, carol@norredlaw.com Phone: 8177043984
----------------------------	---

Registration Subject to Cancellation

Registration No.	5257580	Registration date	08/01/2017
Registrant	Tensor International Corporation Suite 500 2500 Northwinds Parkway Alpharetta, GA 30009 UNITED STATES		


Goods/Services Subject to Cancellation

Class 017. First Use: 2016/10/31 First Use In Commerce: 2016/10/31 All goods and services in the class are subject to cancellation, namely: Plastic sheet materials for construction; plastic mesh materials for asphalt and concrete reinforcement, and construction of civil engineering structures
Class 019. First Use: 2016/10/31 First Use In Commerce: 2016/10/31 All goods and services in the class are subject to cancellation, namely: Soil reinforcement mesh and soil stabilization mesh made of plastic; soil erosion control structures, namely, gabions and mattresses constructed of plastic mesh; plastic mesh material for construction of civil engineering structures

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	87675458	Application Date	11/07/2017
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EARTHLOK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 2010/08/31 First Use In Commerce: 2010/08/31 Soil stabilizers for use in road construction		

Attachments	87675458#TMSN.png(bytes) 2018_06_08-PetitionToCancel-Earthlok-Final.pdf(135878 bytes)
-------------	---

Signature	/Warren V. Norred/
Name	Warren V. Norred
Date	06/08/2018

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

Rodney Green	§	In the matter of Registration No. 5,257,580
Petitioner,	§	
v.	§	For the Mark: EARTHLOCK
	§	
Tensar Int'l Corp.,	§	
Registrant.	§	Date registered on: August 1, 2017

Cancellation No. _____ [To be inserted by Patent & Trademark Office]

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

PETITION FOR CANCELLATION

1. Petitioner Rodney Green, located at 1832 FM 66, Waxahachie, Texas 75167, believes that it will be and is damaged by the standard mark, Registration No. 5,257,580, hereafter “Registered Mark”, and hereby petitions the USPTO to cancel said registration.
2. The current owner of the registration is Tensar International Corporation, located at 2500 Northwinds Parkway, Suite 500, Alpharetta, Georgia 30009, hereafter “Registrant”.
3. On November 7, 2017, Petitioner applied for Trademark S/N 87675458, hereafter “Mark”. On March 3, 2018, Petitioner received an office action for said application which included a refusal based on a likelihood of confusion with the Registered Mark.
4. Petitioner began using its Mark in June 2010, and has continuously used it since that time. The public associates and uses the Mark with reference to Petitioner. Additionally, Petitioner owns New Earthlok, LLC which registered the Mark with the State of Texas on June 2, 2011; Registrant admits that it has used its Registered Mark only since October 2016.
5. The USPTO has concluded that a likelihood of confusion exists between Petitioner’s marks and the Registered Mark.

6. Petitioner contends that agents for Tensar International Corporation, who owns the Registered Mark and who operates stabilizing ground restraints employing the Registered Mark, was aware of Petitioner, and violated federal law when agreeing to the statement:

"The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true."

7. Petitioner asks this Board to cancel the Registration for fraud in accordance with previous fraudulently obtained registrations. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ 2d 1938 (Fed. Cir. 2009) and *Torres v. Cantine Torresella S.r.l.* 808 F.2d 46, 1 USPQ 2d 1483 (Fed. Cir. 1986).

8. Though unlikely, the Registered Mark can be confused with the Petitioner's Mark, and Petitioner believes that the Registered Mark was chosen specifically to use the Registrant's larger commercial size to simply overwhelm the Petitioner's use of the Mark, and noticing that the Petitioner had not registered the Mark, applied for the Registered Mark on June 2016 with an intent-to-use mark so as to test the waters and only achieved the registration on August 1, 2017.

9. Alternatively, Petitioner asks this Board to recognize that sophisticated organizations purchase the products and services of the Registrant and Applicant and few people in the industry would confuse the services and products provided by the Applicant with those of the Registrant and allow Petitioner's Mark to complete registration.

WHEREFORE, Petitioner alleges Registration No. 5,257,580 is damaging Petitioner, requests the USPTO grant the instant Petition for Cancellation, and cancel the aforesaid registration.

The fee required by §2.6(a)(16) is enclosed herewith.

Respectfully submitted,

By: /s/ Warren V. Norred

Warren V. Norred, Norred Law, PLLC

Texas Bar No. 24045094

515 E. Border Street; Arlington, TX 76010

(817) 704-3984; (817) 524-6686 (telefax)

wnorred@norredlaw.com

Attorney for Petitioner