

ESTTA Tracking number: **ESTTA1004941**

Filing date: **09/26/2019**

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	Sunrich Company, LLC		
Entity	limited liability company	Citizenship	California
Address	2272 Wind River Lane Rowland Heights, CA 91748 UNITED STATES		

Attorney information	Kelly K. Pfeiffer DARLING & RISBROUGH LLP 19200 Von Karman, Suite 750 Irvine, CA 92612 UNITED STATES kkp@darlingrisbrough.com, red@darlingrisbrough.com 714-384-4250		
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Registration Subject to Cancellation

Registration No.	5850814	Registration date	09/03/2019
Registrant	Shenzhen Nameihong Trading Co., Ltd. Room 1407, Shijihui Duhuixuan No. 3018, Shennan Avenue, Futian Shenzhen, 518000 CHINA Email: hengda_Receiving@aliyun.com		

Goods/Services Subject to Cancellation


Class 028. First Use: 2019/01/20 First Use In Commerce: 2019/01/20 All goods and services in the class are subject to cancellation, namely: Dolls; Flying discs; Gyroscopes and flight stabilizers for model aircraft; Jigsaw puzzles; Novelty plush toys for parties; Parlour games; Remote-controlled toyvehicles; Scale model vehicles; Spinning tops; Toy vehicles; Toy for pets; Children's multiple activity toys; Electric action toys; Infant toys; Toy building blocks; Toy drones
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	88616389	Application Date	09/13/2019
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	TOPSPEED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2015/11/23 First Use In Commerce: 2015/12/10 Scale model toys, namely, plastic models and die-cast toy models, specifically, scaled toy models of cars, airplanes, boats, and other vehicles; toy cars; toy model vehicles and related accessories sold as units; toy vehicles and accessories therefore		

U.S. Application No.	88616464	Application Date	09/13/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TOP SPEED		
Design Mark			
Description of Mark	The mark consists of the word TOP above and slightly to the left of the word SPEED with a race track to the right of both words forming an open-ended semi circle.		
Goods/Services	Class 028. First use: First Use: 2015/11/23 First Use In Commerce: 2015/12/10 Scale model toys, namely, plastic models and die-cast toy models, specifically, scaled toy models of cars, airplanes, boats, and other vehicles; toy cars; toy model vehicles and related accessories sold as units; toy vehicles and accessories therefore		

Attachments	88616389#TMSN.png(bytes) 88616464#TMSN.png(bytes) Petition to Cancel TOPSPEED GYRO.pdf(182812 bytes)
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Signature	/Kelly K. Pfeiffer/
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Name	Kelly K. Pfeiffer
Date	09/26/2019

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

In the matter of United States Registration No. 5850814

Mark: "TOPSPEED GYRO"

SUNRICH COMPANY, LLC,)
 Petitioner,)
)
 v.)
)
SHENZHEN NAMEIHONG)
TRADING CO., LTD.,)
 Respondent.)
_____)

Cancellation No. _____

PETITION TO CANCEL

SUNRICH COMPANY, LLC ("Petitioner") believes that it has been damaged by and continues to be damaged by Registration No. 5850814 and hereby petitions to cancel the same under the provisions of 15 U.S.C. § 1064 and 15 U.S.C. § 1052(d). As grounds for its cancellation, Petitioner alleges as follows:

1. Petitioner is a California limited liability company with an address of 2272 Wind River Lane, Rowland Heights, CA 91748.
2. Petitioner believes that it has been, and will continue to be, damaged by the stylized TOPSPEED GYRO mark as shown in Registration No. 5850814 (the "Registration"), and hereby petitions to cancel the same for all of the goods set forth in the registration, namely, *dolls; flying discs; gyroscopes and flight stabilizers for model aircraft; jigsaw puzzles; novelty plush toys for parties; parlour games; remote-controlled toy vehicles; scale model vehicles; spinning tops; toy vehicles; toy [sic] for pets; children's multiple activity toys; electric action toys; infant toys; toy building blocks; toy drones* in Class 28 ("Respondent's Goods").

3. Petitioner is the owner of U.S. Application Serial No. 88616389 for the mark TOP SPEED in standard characters in connection with *scale model toys, namely, plastic models and die-cast toy models, specifically, scaled toy models of cars, airplanes, boats, and other vehicles; toy cars; toy model vehicles and related accessories sold as units; toy vehicles and accessories therefore* in Class 28. Petitioner is also the owner of U.S. Application Serial No. 88616464 for the stylized mark TOP SPEED in connection with *scale model toys, namely, plastic models and die-cast toy models, specifically, scaled toy models of cars, airplanes, boats, and other vehicles; toy cars; toy model vehicles and related accessories sold as units; toy vehicles and accessories therefore* in Class 28 (“the Applications”). Petitioner is in the business of manufacturing and selling the goods listed in the Applications under TOP SPEED in standard characters and TOP SPEED in a stylized format (hereinafter “the TOP SPEED Marks”).

4. Petitioner has been, and continues to be, damaged in that the Registration has been cited against the Applications as a basis for refusal of registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

5. Upon information and belief, Respondent SHENZHEN NAMEIHONG TRADING CO., LTD. (“Respondent”) is the owner of the Registration.

6. Upon information and belief, Respondent is a Chinese limited liability company with an address of Room 1407, Shijihui Duhuixuan No. 3018, Shennan Avenue, Futian Shenzhen CHINA 518000.

7. On February 28, 2019, Respondent filed Application Serial No. 88319331 for the stylized mark TOPSPEED GYRO under Section 1(a) of the Trademark Act which then matured into Registration No. 5850814 on September 3, 2019. The Registration claims a first use anywhere date of January 20, 2019 and a first use in U.S. Commerce date of January 20, 2019.

8. Petitioner has been using the TOP SPEED Marks identified in the Applications for *scale model toys, namely, plastic models and die-cast toy models, specifically, scaled toy models of cars, airplanes, boats, and other vehicles; toy cars; toy model vehicles and related accessories sold as units; toy vehicles and accessories therefore* since at least as early as November 23, 2015 and in U.S. Commerce since at least as early as December 10, 2015.

9. Petitioner's use of its TOP SPEED Marks identified in the Applications predates (1) Respondent's February 28, 2019 filing date for the Registration, (2) Respondent's January 20, 2019 claimed first use date for the Registration, and (3) Respondent's September 3, 2019 registration date.

10. The stylized TOPSPEED GYRO mark in the Registration is nearly identical to, and confusingly similar with, Petitioner's TOP SPEED Marks in the Applications in sight, sound, and commercial impression.

11. Many of Respondent's Goods, such as "scale model vehicles" and "toy vehicles," are identical to goods identified in the Applications. The rest of Respondent's Goods are similar and/or related to the goods identified in the Applications.

12. Upon information and belief, Respondent's Goods are and/or will be marketed, promoted, and offered through similar marketing channels and to a similar class of consumers as the goods marketed, promoted, and offered by Petitioner under its TOP SPEED Marks.

13. Respondent's stylized TOPSPEED GYRO mark so resembles Petitioner's TOP SPEED Marks that the use, promotion, and continued registration of the Registration will cause consumers in the United States to assume, erroneously, and to be confused, misled, and/or deceived to believe that Respondent's Goods are authorized, licensed, affiliated, endorsed, sponsored by, or connected in some way with Petitioner, and, in fact, the Registration has been

cited against the Applications as a basis for refusal of registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), all to Petitioner's harm.

14. In view of Petitioner's priority and the likelihood of confusion created by Respondent's TOPSPEED GYRO mark as it appears in the Registration, Respondent is not entitled to continued registration of the mark pursuant to 15 U.S.C. § 1064, and, as such, the Registration should be cancelled.

Petitioner reserves the right to amend this Petition to allege other claims in the event further information is discovered. The \$400 filing fee for this petition to cancel is filed herewith.

WHEREFORE, Petitioner prays that U.S. Trademark Registration No. 5850814 be cancelled and that this petition be granted in Petitioner's favor.

Dated: September 26, 2019

Respectfully submitted,



Kelly K. Pfeiffer
Darling & Risbrough, LLC
19200 Von Karman, Suite 750,
Irvine, California 92612

Attorneys for Petitioner SUNRICH COMPANY, LLC