

ESTTA Tracking number: **ESTTA1016926**

Filing date: **11/20/2019**

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	Nikko Toys Limited		
Entity	Limited liability company	Citizenship	Hong Kong
Address	6-8 Harbour Road Unit 2901, Shui On, Centre Hong Kong, 0 HONG KONG		

Attorney information	Adriano Pacifici Intellectual Property Consulting, LLC 334 Carondelet Street, Suite B New Orleans, LA 70130 UNITED STATES apacifici@iplawconsulting.com, creid@iplawconsulting.com 5043236600		
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Registration Subject to Cancellation

Registration No.	2703439	Registration date	04/08/2003
Registrant	P.C. Woo, Inc. 6443 E. Slauson Commerce, CA 90040 UNITED STATES		

Goods/Services Subject to Cancellation

Class 028. First Use: 1994/07/31 First Use In Commerce: 1994/07/31 All goods and services in the class are subject to cancellation, namely: Friction and battery operated toy vehicles

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	Petition for Cancellation - MEGA MONSTER.pdf(210348 bytes)
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Signature	/APacifici/
Name	Adriano Pacifici
Date	11/20/2019

vehicles; Radio controlled toy vehicles; Radio-controlled toy vehicles; Remote-controlled toy vehicles”.

4. Upon information and belief, Registrant P.C. Woo, Inc. d/b/a Megatoys (“Registrant”), is a California corporation with a principal business address of 6443 E. Slauson, Commerce, CA 90040.
5. On December 23, 1999, Registrant applied to register the MEGA MONSTER mark (Reg. No. 2703439) (“Registrant’s Mark”) in international class 028 for “Friction and battery operated toy vehicles” with an alleged first use in commerce as of July 31, 1994.
6. Registrant’s Mark was registered on April 8, 2003.
7. On August 5, 2019, Petitioner received a non-final office action refusing to register Petitioner’s Mark on the grounds of section 2(d) likelihood of confusion in view of Registrant’s Mark.
8. For the reasons set forth below, U.S. Registration No. 2703439 should be cancelled.

II. ABANDONMENT

9. Upon information and belief, Registrant has abandoned Registrant’s Mark and does not have the intent to resume use of the mark.
10. Upon information and belief, Registrant is not currently using the MEGA MONSTER mark in commerce in connection with “Friction and battery operated toy vehicles”.
11. Upon information and belief, there are no products for sale on Registrant’s website, <http://www.megatoys.com>, bearing Registrant’s MEGA MONSTER mark.

12. Upon information and belief, there are no products for sale anywhere bearing Registrant's MEGA MONSTER mark.
13. Upon information and belief, toy products previously sold bearing Registrant's Mark are no longer available in third-party retail outlets or online.
14. Upon information and belief, Registrant's entire catalog is available on its website and does not list any products under the MEGA MONSTER mark.
15. Registrant has abandoned use of Registrant's Mark and lacks any intent to resume use of the MEGA MONSTER trademark.
16. Under the 1989 amendments, the Lanham Act defines use in commerce as "the *bona fide* use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark." 15 U.S.C. § 1127. Congress intended to end so-called "token" use programs.
17. Because the word mark MEGA MONSTER is no longer in active use by its owner, and because evidence shows the owner has abandoned Registrant's Mark, Registrant is not entitled to maintain its trademark rights and cancellation of U.S. Registration No. 2703439 is both proper and required.
18. Petitioner respectfully requests that this Board find that Registrant has abandoned its MEGA MONSTER trademark and lacks the intent to resume use of the mark, and that the Board cancel Registration No. 2703439.

