

ESTTA Tracking number: **ESTTA1047431**

Filing date: **04/07/2020**

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	Dong Yang Smart Technology Co.,Ltd		
Entity	LIMITED LIABILITY COM-PANY	Citizenship	China
Address	No.45, FuDong Industrial Zone, HeChang Rd 2, ZhongKai High Tech Zone, Huizhou, Guangdong, 516000 CHINA		

Attorney information	M. Scott Alprin Alprin Law Offices, P.C. 5 Pinehurst Circle, N.W. Washington, DC 20015 UNITED STATES trademarks@alprinlaw.com 202-659-8225
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Registrations Subject to Cancellation

Registration No.	5616332	Registration date	11/27/2018
Registrant	Cheng, Qi Ping No. 90, Anlong Group, Niulingpian Xinyuan Village, Gugang Town Liuyang, 410300 CHINA Email: trademark@cn-ip.cn		

Goods/Services Subject to Cancellation

Class 007. First Use: 2014/04/23 First Use In Commerce: 2014/04/23 All goods and services in the class are subject to cancellation, namely: Alternators; Brushes being parts of motors, generators and dynamos; Brushes being parts of or for use with generators, alternators and dynamos; Cylinders for motors and engines; DC generators; Directcurrent motors; Engines and motors for model vehicles, aircraft and boats; Miniature electric motors for toys; Motors and engines, except for land vehicles; Motors for model vehicles and/or slot cars

Grounds for Cancellation

No use of mark in commerce before application, amendment to allege use, or statement of use was filed	Trademark Act Sections 14(1) and 1(a), (c), and (d)
Registrant not rightful owner of mark for identified goods or services	Trademark Act Sections 14(1) and 1

Fraud on the USPTO		Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)	
Registration No.	5617288	Registration date	11/27/2018
Registrant	Cheng, Qi Ping No. 90, Anlong Group, Niulingpian Xinyuan Village, Gugang Town Liuyang, 410300 CHINA Email: trademark@cn-ip.cn		

Goods/Services Subject to Cancellation

<p>Class 012. First Use: 2016/04/23 First Use In Commerce: 2016/04/23 All goods and services in the class are subject to cancellation, namely: Propeller Drones; Propeller blade protectors for Drones; Thrust reversers for Drones engines; Tilt rotor Drones; Dronesparts, namely, landing gear; Drones; Camera drones; Structural parts for drones, namely, propellers and airframes; Hobby drones for intermediate and higher user age 16 and above featuring cameras, propellers, remote control, wireless network communications and wireless telephonedcommunications capabilities; Drone accessories, namely, fitted covers speciallyadapted for drones</p>
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Grounds for Cancellation

No use of mark in commerce before application, amendment to allege use, or statement of use was filed	Trademark Act Sections 14(1) and 1(a), (c), and (d)
Registrant not rightful owner of mark for identified goods or services	Trademark Act Sections 14(1) and 1
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	Dong Yang Smart Tech v. Cheng (Case 2) - Pet. to Cancel - 4-7-20 PDF.pdf(532952 bytes)
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Signature	/M. Scott Alprin/
Name	M. Scott Alprin
Date	04/07/2020

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

Dong Yang Smart Technology Co., Ltd.,
Petitioner,

v.

Cheng, Qi Ping,
Respondent.

Cancellation No.: _____

Registration No. 5616332 in Class 7
(petitioned)

Registration No. 5617288 in Class 12
(petitioned)

Petitioned Mark: (*dys and Design*)



PETITION FOR CANCELLATION

Dong Yang Smart Technology Co., Ltd. (“Petitioner”) asserts that it is and will continue to be damaged by the continued registration of the above-referenced “dys and Design” mark (“the Petitioned Mark” or “Petitioner’s Mark”) in Registration No. 5616332 in Class 7 (“Respondent’s Class 7 Registration”) and Registration No. 5617288 in Class 12 (“Respondent’s Class 12 Registration”) (collectively, “the Petitioned Registrations”) in the name of Qi Ping Cheng (“Respondent”), and hereby petitions for the cancellation thereof under 15 U.S.C. § 1064 and 37 C.F.R. § 2.111(b).

As grounds for cancellation, Petitioner alleges as follows:

The Parties and Their Marks

1. Petitioner is a Chinese corporation with a principal place of business at No.45, FuDong Industrial Zone, HeChang Rd 2, ZhongKai High Tech Zone, Huizhou City, Guangdong Province, 516000 China.

2. Petitioner uses the Petitioned Mark/Petitioner’s Mark in connection with recreational remote controlled drone aircraft, and parts therefor, in China, the United States, and elsewhere, and has done so for many years.

3. Petitioner is the owner of Chinese Registration Nos. 6573118 (registered on July 7, 2010) and 18977250 (registered on February 28, 2017) for the marks “dys” (stylized) and the Petitioned Mark/Petitioner’s Mark, respectively, both for goods in International Class 28, including the kinds of drones properly classifiable in International Class 28. Copies of the Chinese certificates of registration for these marks are reproduced in the following:



4. Petitioner is the owner of U.S. Trademark Application Ser. No. 88450071 (“Petitioner’s Application”) for Petitioner’s Mark, which is identical to the Petitioned Mark, in connection with

“Cabinets for loudspeakers; Camcorders; Cameras; Cases especially made for photographic apparatus and instruments; Portable media players; Remote control telemetering machines and apparatus; Teaching robots; Tripods for cameras; Viewfinders, photographic; Educational apparatus, namely, manipulative blocks used as teaching aids for the visualization of math concepts” in Class 9 and *“Flying discs; Gyroscopes and flight stabilizers for model aircraft; Radio-controlled toy vehicles; Scale model kits; Scale model vehicles; Smart electronic toy vehicles; Smart plush toys; Smart robot toys; Toy cars; Toy drones; Toy models; Toy telescopes; Toy aircraft; Toy cameras; Toy vehicles; Video game machines; Scale model airplanes; Toy airplanes”* in Class 28. Petitioner’s Application was filed on May 29, 2019, and abandoned unintentionally on February 28, 2020; Petitioner plans on reviving its application in the near future, prior to the deadline of May 9, 2020 to do so. A printout of the TESS page for this application is attached hereto as **Exhibit 1**.

5. Respondent’s Class 7 Registration, filed on April 8, 2018 under an actual use basis, and registered on November 27, 2018, lists the following goods: *“Alternators; Brushes being parts of motors, generators and dynamos; Brushes being parts of or for use with generators, alternators and dynamos; Cylinders for motors and engines; DC generators; Direct current motors; Engines and motors for model vehicles, aircraft and boats; Miniature electric motors for toys; Motors and engines, except for land vehicles; Motors for model vehicles and/or slot cars”* (“Respondent’s Class 7 Goods”). The specimen of use submitted with the application for Respondent’s Class 7 Registration showed Petitioner’s product in an e-commerce setting, as in the following excerpted images:

AliExpress All Categories [New here? Get your coupons!](#)

Store: **filmsteady Store** Open 4 year(s) 98.4% Positive feedback

Home > All Categories > Consumer Electronics > Camera & Photo > Camera Drones Accessories > Motor



Mouse over to zoom in

DYS Sanguk Series Shu 2306 2500KV 3-4S Direct Current Motors DC Brushless Motor for FPV Racing Frame quadcopter kit

2 orders

Price: **US \$10.09** / piece

Shipping: **US \$4.82 to United States via AliExpress Standard Shipping**
Estimated Delivery Time: 19-39 days

Quantity: piece (50 pieces available)

Total Price: **US \$14.91**

Store Promotion:

Return Policy: Returns accepted if product not as described, buyer pays return shipping fee; or keep the product & agree refund with seller. [View details](#)

Seller Guarantees: On-time Delivery **60 days**

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Store: **filmsteady Store** Open 4 year(s) 98.4% Positive feedback

Home > All Categories > Consumer Electronics > Camera & Photo > Camera Drones Accessories > Motor



Mouse over to zoom in

DYS 4108 Brushless Gimbal Motor BGM4108-130HS Direct Current Motors for Sony NEX ILDC Camera Mount FPV Aerial Photography

Price: **US \$26.90** / piece

Shipping: **Free Shipping to United States via AliExpress Standard Shipping**
Estimated Delivery Time: 19-39 days

Quantity: piece (50 pieces available)

Total Price: **US \$26.90**

Store Promotion:

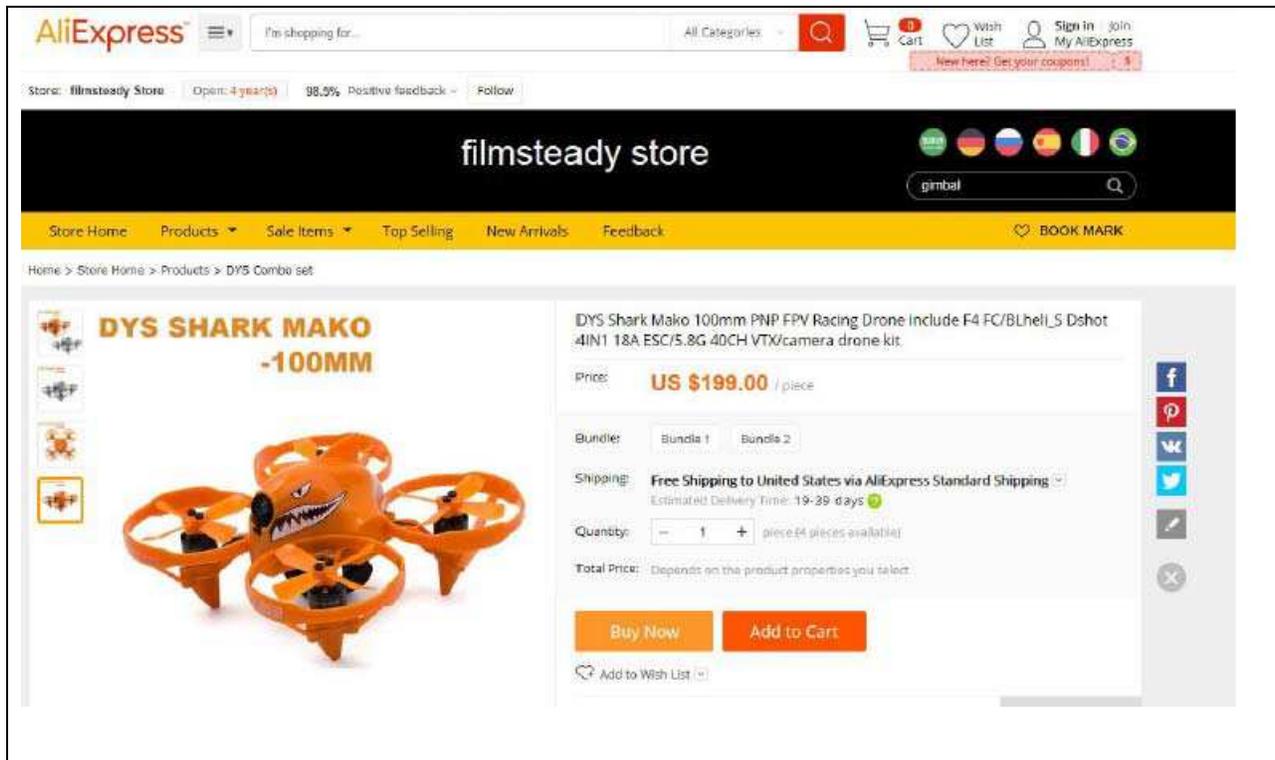
Return Policy: Returns accepted if product not as described, buyer pays return shipping fee; or keep the product & agree refund with seller. [View details](#)

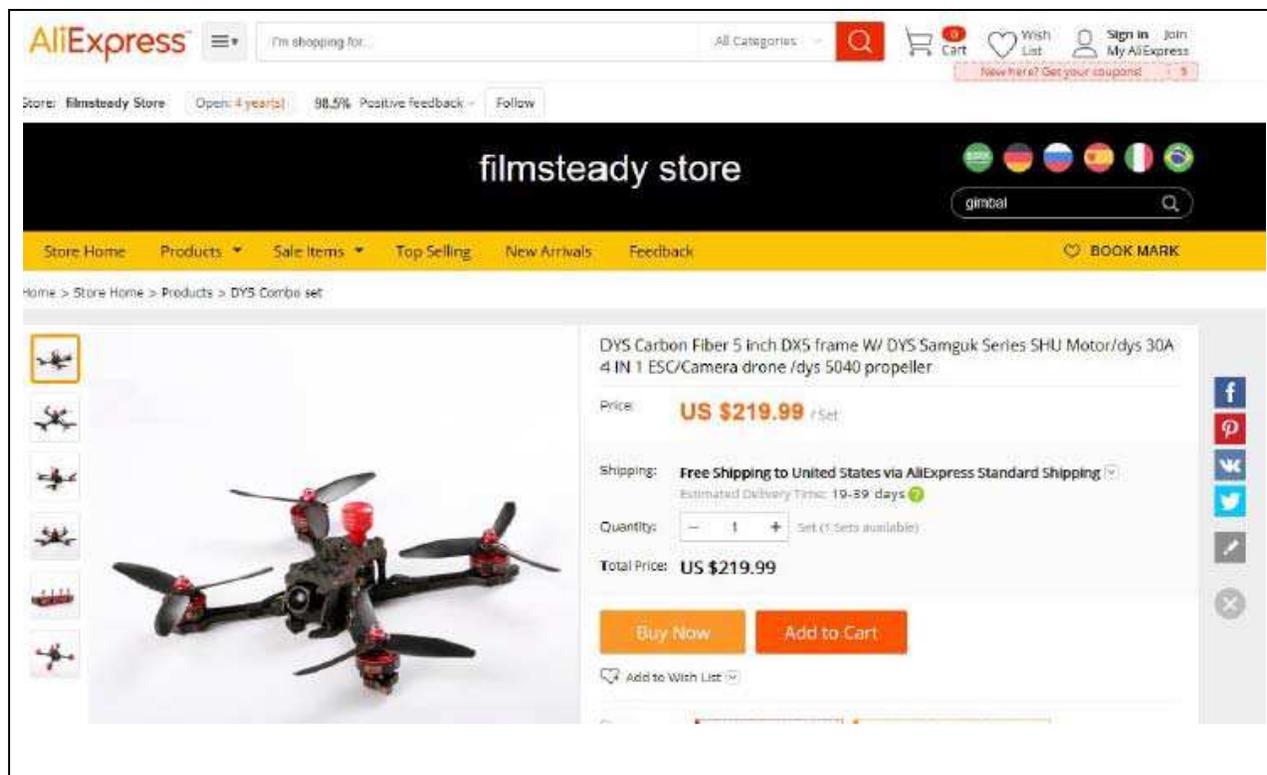
Seller Guarantees: On-time Delivery **60 days**

Payment: VISA MasterCard American Express PayPal Western Union Money Order

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6. Respondent’s Class 12 Registration, filed on April 19, 2018 under an actual use basis, and registered on November 27, 2018, lists the following goods: “*Propeller Drones; Propeller blade protectors for Drones; Thrust reversers for Drones engines; Tilt rotor Drones; Drones parts, namely, landing gear; Drones; Camera drones; Structural parts for drones, namely, propellers and airframes; Hobby drones for intermediate and higher user age 16 and above featuring cameras, propellers, remote control, wireless network communications and wireless telephone communications capabilities; Drone accessories, namely, fitted covers specially adapted for drones*” (“Respondent’s Class 12 Goods”). The specimen of use submitted with the application for Respondent’s Class 12 Registration showed Petitioner’s product in an e-commerce setting, as in the following excerpted images:





Prior TTAB Litigation Between Parties

7. The parties engaged in litigation before the TTAB in Petition for Cancellation No. 92068009 from March 4, 2018, when Petitioner filed a Petition for Cancellation (“the prior Petition”), to February 8, 2019, when the Board granted Petitioner’s motion for sanctions as conceded. The Director cancelled the petitioned registration, Registration No. 5133254 for the identical mark now the subject of the present petition, for “*Amusement game machines; Body-building apparatus; Controllers for toy cars and planes; Croquet sets; Flying discs; Gaming equipment, namely, playing cards, chips, gaming tables and gaming cloths; Gyroscopes and flight stabilizers for model aircraft; Remote control toy glider, airplane and sailplane equipment, namely, launchers, engines, propellers; Remote control toys, namely, cars, race cars, airplanes, boats; Scale model kits; Scale model vehicles; Toy drones; Toy models,*” on February 11, 2019.

8. The grounds for the prior Petition were: (1) no use in commerce of the trademark as of the filing date (June 24, 2016) of the application, which was filed under Section 1(a) of the Trademark Act; (2) fraud upon the USPTO.

9. It is noted that Respondent filed his Answer in the prior Petition on April 13, 2018. So, Respondent was on full notice when he filed Respondent's Class 7 Registration on April 8, 2018 and Respondent's Class 12 Registration, filed on April 19, 2018

10. Whereas Petitioner alleged in the prior Petition that Respondent superimposed or "photo-shopped" Petitioner's mark so that it appeared affixed to the products of a third party in its specimen of use (filed on June 24, 2016), here, Petitioner is alleging that Respondent brazenly appropriated Petitioner's products for use in his own specimens of use (filed on April 8 and 19, 2018, respectively) in the Petitioned Registrations.

Nonuse of Trademark in Commerce at Time of Filings

11. Although Respondent signed a declaration of use when he filed his application, upon information and belief, Respondent has never used the Petitioned Mark in commerce in connection with Respondent's Class 7 Goods and Respondent's Class 12 Goods. Respondent was not using his mark in commerce in connection with Respondent's Class 7 Goods when the application that became Respondent's Class 7 Registration was filed on April 8, 2018; and Respondent was not using its mark in commerce in connection with Respondent's Class 12 Goods when the application that became Respondent's Class 12 Registration was filed on April 19, 2018.

12. In light of the foregoing paragraph, Respondent's Class 7 Registration and Respondent's Class 12 Registration should therefore be deemed void ab initio due to nonuse.

Fraud

13. Upon information and belief, Respondent committed fraud upon the USPTO by knowingly representing Petitioner's product as his own product when he filed the specimens of use for Petitioned Registrations.

14. Respondent was well aware at the time of the filing of the Petitioned Registrations that he should not use the products of another company for his specimens of use.

15. The following evidence supports the position that Respondent was well aware at the time of the filing of the Petitioned Registrations that he should not use the products of another company for his specimens of use:

- The prior Petition for Cancellation, filed on March 4, 2018, stated the following: "Upon information and belief, Respondent committed fraud upon the USPTO by superimposing or photo-shopping the Petitioned Mark/Petitioner's Mark (in red), over the "CX-20" wording (in red), onto the front of the product, a product that has never actually been sold under the Petitioned Mark/Petitioner's Mark." *See* Petition No. 92068009 TTABVUE 1, Par. 7.
- In the Answer, Respondent admitted that the specimen of use was the product of a third party, called Cheerson, stating: "Answering paragraph 7 of the Petition for Cancellation, Registrant denies the allegations thereof and clarify that Registrant's product pictured in the said specimen of use is an OEM product of Cheerson. Registrant gave up this product since the OEM processing cooperation with Cheerson was not reached finally." *See* Petition No. 92068009 TTABVUE 4, Par. 7.

16. The following evidence also supports the position that Respondent was well at the time of the filing of the petitioned registrations that he should not use the product of another company for his specimen of use:

- Undersigned counsel wrote the following to Respondent on June 13 2018: "Please note that, under U.S. trademark law, a registration for goods that was filed under an "actual use basis" without any use or sales of the mark will be cancelled by the USPTO if challenged by a third party. Therefore, we feel that we ... must not enter settlement discussions. Instead, we will continue to seek the cancellation of your registration."

17. The following comment supports the position that Respondent was well aware at the time of the filing of the Petitioned Registrations that he should not use the product of another company for his specimen of use: Respondent signed a declaration of use for Respondent's Class 7 Registration and Respondent's Class 12 Registration subsequent to being sued for, *inter alia*, fraud upon the USPTO (in the prior Petition for Cancellation) for not telling the truth in his declaration of use. Accordingly, if Respondent believed he was legitimately using a mark in commerce by appropriating the product of another company for use in a specimen of use, such belief would not be a simple mistaken belief; rather, such a belief, after being sued for the same issue in a prior Petition for Cancellation, would constitute an "intent to deceive" due to the reckless nature of signing numerous documents before the USPTO without understanding the content thereof.

Ownership

18. Upon information and belief, Respondent is not the rightful owner of the Petitioned Mark in connection with the Respondent's Class 7 and Class 12 Goods.

19. Petitioner is the rightful owner of the Petitioned Mark / Petitioner's Mark.

20. For the foregoing reasons, Petitioner believes and alleges that it is and will be damaged by the continued registration of the Petitioned Mark in the Petitioned Registrations.

21. The continued registration of the Petitioned Mark would confer upon Respondent rights to which it is not entitled.

WHEREFORE Petitioner, by counsel, respectfully requests that the instant petition be granted and United States Trademark Registration Nos. 5616332 (in Class 7) and 5617288 (in Class 12) be cancelled.

The petition fee of \$800 (\$400 per petitioned registration) is being submitted in conjunction herewith. Undersigned counsel's address in the below signature block may be considered the correspondence address for Petitioner in this matter.

Respectfully submitted,

ALPRIN LAW OFFICES, P.C.

Date: April 7, 2020

/M. Scott Alprin/
M. Scott Alprin
Yuka Kobayashi
Asha E. Velay

Attorneys for Petitioner

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Exhibit 1



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Word Mark	DYS
Goods and Services	(ABANDONED) IC 009. US 021 023 026 036 038. G & S: Cabinets for loudspeakers; Camcorders; Cameras; Cases especially made for photographic apparatus and instruments; Portable media players; Remote control telemetering machines and apparatus; Teaching robots; Tripods for cameras; Viewfinders, photographic; Educational apparatus, namely, manipulative blocks used as teaching aids for the visualization of math concepts (ABANDONED) IC 028. US 022 023 038 050. G & S: Flying discs; Gyroscopes and flight stabilizers for model aircraft; Radio-controlled toy vehicles; Scale model kits; Scale model vehicles; Smart electronic toy vehicles; Smart plush toys; Smart robot toys; Toy cars; Toy drones; Toy models; Toy telescopes; Toy aircraft; Toy cameras; Toy vehicles; Video game machines; Scale model airplanes; Toy airplanes
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.11.02 - Plain single line rectangles ; Rectangles (single line)
Serial Number	88450071
Filing Date	May 29, 2019
Current Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Dong Yang Smart Technology Co.,Ltd LIMITED LIABILITY COMPANY CHINA No.45, FuDong Industrial Zone, HeChang Rd 2, ZhongKai High Tech Zone, Huizhou, Guangdong, CHINA 516000
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of stylized letters "dys" in a rectangle.
Type of Mark	TRADEMARK
Register	PRINCIPAL

Live/Dead Indicator DEAD

Abandonment Date February 28, 2020

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