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Filing date: **06/05/2020**

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	Asustek Computer Incorporation		
Entity	Corporation	Citizenship	Taiwan
Address	4F, No. 150, Li-Te Rd. Peitou, Taipei, 00000 TAIWAN		

Attorney information	Charles P. Guarino Moser Taboada 1030 Broad Street, Suite 203 Shrewsbury, NJ 07702 UNITED STATES cguarino@mtiplaw.com, docket@mtiplaw.com 732-945-9498
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Registration Subject to Cancellation

Registration No.	5698579	Registration date	03/12/2019
Registrant	ROG OUTDOORS, LLC 771 Saint Clair Avenue Columbus, OH 43201 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2018/12/14 First Use In Commerce: 2018/12/14 All goods and services in the class are subject to cancellation, namely: apparel, namely, shirts and hats

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.	88228149	Application Date	12/13/2018
Registration Date	NONE	Foreign Priority Date	12/10/2018
Word Mark	ROG		

Design Mark	<h1>ROG</h1>
Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 0 First Use In Commerce: 0 Backpacks; Bags for sports; All purposesport bags; Tote bags; Handbags; Suitcase; Travelling trunks; Luggage; Pocket wallets; Wallets; Name card cases; Briefcases; Keycases; Bags of leather for packaging; Reusable shopping bags; Umbrellas; Travelling sets, namely, travelling bags; Briefcases for documents; Motorized suitcases; Garment bags for travel

U.S. Registration No.	5911781	Application Date	06/08/2018
Registration Date	11/19/2019	Foreign Priority Date	06/05/2018

Word Mark	ROG
Design Mark	<h1>ROG</h1>

Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 0 First Use In Commerce: 0 Computers; Computer hardware; Computer operating programs, recorded; Headphones; Microphones; Computer application software for mobile phones to enable uploading, downloading, accessing, posting, transmitting, displaying, editing, tagging, blogging, voting, streaming, linking and sharing videos for online contests; Mobile phones; Smartphones; Cell phone covers; Cases for smartphones; Cell phone straps; Protective films adapted for smartphones; Hands-free kits for phones; Battery chargers; Batteries; Touch screen; Blank integrated circuit cards; Blank smart cards; Data processing equipment, namely, couplers; Electric connectors; Mobile phones docking stations; Computer docking stations; Electronic docking stations; External cooling fans adapted for mobile phones; Internal cooling fans for computers; External cooling fans specifically adapted for use with computers; Central processing unit (CPU) coolers

Attachments	88228149#TMSN.png(bytes) 87954027#TMSN.png(bytes)
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	ROG - Petition to Cancel.pdf(106933 bytes)
Signature	/Charles P. Guarino/
Name	Charles P. Guarino
Date	06/05/2020

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

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ASUSTEK COMPUTER INCORPORATION,

Petitioner,

v.

ROG OUTDOORS, LLC,

Registrant.

Cancellation No.:

Mark: ROG OUTDOORS
 (and Design)

Reg. No. 5,698,579

Registered: March 12, 2019

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PETITION TO CANCEL

Petitioner, Asustek Computer Incorporation (“Asus” or “Petitioner”), with an address of 4F, No. 150, Li-Te Rd., Peitou, Taipei, Taiwan, believes it will be damaged by the continued registration of U.S. Trademark Registration No. 5,698,579 for the mark ROG OUTDOORS (and Design), and hereby petitions for the cancellation of same.

As grounds for its Petition to Cancel, Petitioner, by its attorneys, alleges that:

1. Asus is a leading worldwide manufacturer and seller of, *inter alia*, computer and electronics products, including desktop computers, laptops, mobile phones, networking equipment, monitors, graphics cards, multimedia products, peripherals, and related storage and accessory products, including backpacks, tote bags, and messenger bags. Asus markets and sells these goods in U.S. commerce under numerous common law and registered trademarks.

2. Upon information and belief, Rog Outdoors, LLC (“Outdoors” or “Registrant”) is a limited liability company organized and existing under the laws of Ohio with its principal place of business at 771 Saint Clair Avenue, Columbus, Ohio 43201.

3. Outdoors is listed in the U.S. Patent and Trademark Office (“US-PTO”) records as the current record owner of U.S. Trademark Registration No. 5,698,579, issued on March 12, 2019, for the mark ROG OUTDOORS (and Design) for “apparel, namely, shirts and hats” in International Class 25 (the “Outdoors Registration”). A true copy of the Outdoors Mark is shown below:



4. Asus is the owner of pending United States Trademark Application Serial No. 88-228149 (the ‘149 Application) for the mark ROG in connection with the following accessory goods in Class 18: “Backpacks; Bags for sports; All purpose sport bags; Tote bags; Handbags; Suitcase; Travelling trunks; Luggage; Pocket wallets; Wallets; Name card cases; Briefcases; Keycases; Bags of leather for packaging; Reusable shopping bags; Umbrellas; Travelling sets, namely, travelling bags; Briefcases for documents; Motorized suitcases; Garment bags for travel.”

5. Since at least as early as September 2012, well prior to any date upon which Registrant can rely, Asus has used the mark ROG mark in commerce in connection with the Class 18 goods covered by the ‘149 Application, including backpacks, tote bags, and messenger bags.

6. The Asus ‘149 Application was refused pursuant to Section 2(d) of the Lanham Act, on the basis of a likelihood of confusion with the Outdoors Registration. The refusal was

maintained by the Examining Attorney through denial of Asus's Request for Reconsideration After Final Action.

7. Asus has filed an Ex Parte Appeal of the Examining Attorney's final refusal, which is currently pending before the Trademark Trial and Appeal Board. A request to suspend the Ex Parte Appeal pending resolution of this *inter partes* cancellation proceeding has been filed simultaneously with this Petition to Cancel.

8. Asus also owns United States Trademark Registration No. 5,911,781 for its ROG mark in connection with the following Class 9 goods: "Computers; Computer hardware; Computer operating programs, recorded; Headphones; Microphones; Computer application software for mobile phones to enable uploading, downloading, accessing, posting, transmitting, displaying, editing, tagging, blogging, voting, streaming, linking and sharing videos for online contests; Mobile phones; Smartphones; Cell phone covers; Cases for smartphones; Cell phone straps; Protective films adapted for smartphones; Hands-free kits for phones; Battery chargers; Batteries; Touch screen; Blank integrated circuit cards; Blank smart cards; Data processing equipment, namely, couplers; Electric connectors; Mobile phones docking stations; Computer docking stations; Electronic docking stations; External cooling fans adapted for mobile phones; Internal cooling fans for computers; External cooling fans specifically adapted for use with computers; Central processing unit (CPU) coolers." Asus has used its ROG mark in commerce in connection with the above goods since at least 2008.

9. By reason of Asus's extensive sales, promotion, and advertising of products bearing its ROG mark, and the high quality of such products, valuable goodwill has been established in Petitioner's ROG mark, such that members of both the trade and the public recognize and understand that products bearing the mark originate with the Petitioner.

10. As set forth above, Asus's use in commerce of its ROG mark provides Asus with common law rights to the ROG mark prior and superior to those within the Outdoors Registration.

11. The Outdoors Registration, which incorporates the entirety of Petitioner's ROG mark, is highly similar in appearance, sound, and commercial impression to Petitioner's ROG mark.

12. The Class 25 goods within the Outdoors Registration are closely related to the Class 18 goods with which Asus has used and continues to use its ROG mark.

13. The relatedness of the goods within the Outdoors Registration to the goods within the Asus '149 Application is supported by the Examining Attorney's multiple refusals of the Asus '149 Application on the basis of such relatedness.

14. By incorporating the entirety of Asus's ROG mark into its mark, the Outdoors Registration creates confusion with Petitioner's mark.

15. Based on the similarities of the marks and goods, consumers are likely to confuse or associate the goods sold by Registrant under the Outdoors Registration with Asus and Asus's ROG products, or to believe that such good are made, sponsored, endorsed, or licensed by Asus, or that there is some relationship between the Registrant and Asus.

16. For the above reasons, the continued registration of the Outdoors Registration is likely to cause confusion or mistake, or to deceive the purchasing public into mistakenly believing that the goods described therein originate from, come from, or otherwise are associated with Petitioner's goods, in violation of Section 2(d) of the Lanham Act.

17. By reason of the foregoing, Asus shall be damaged by the continued registration of the Outdoors Registration.

WHEREFORE, it is respectfully requested that this petition to cancel be sustained and that U.S. Trademark Registration No. 5,698,579 be cancelled.

Dated: June 5, 2020

Respectfully submitted,

/Charles P. Guarino/
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