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Filing date: **06/30/2020**

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	MD AUDIO ENGINEERING, INC.		
Entity	Corporation	Citizenship	Florida
Address	6941 NW 42 Street Miami, FL 33166 UNITED STATES		

Attorney information	Jesus Sanchelima, Esq. Sanchelima & Associates, P.A. 235 S.W. Le Jeune Road Miami, FL 33134 UNITED STATES legal@sanchelima.com, jesus@sanchelima.com, paralegal@sanchelima.com (305) 447-1617		
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Registration Subject to Cancellation

Registration No.	5876508	Registration date	10/08/2019
International Registration No.	NONE	International Registration Date	NONE
Registrant	Grupo Massimo Dutti, S.A. Avenida de la Diputaci3n, Edificio Inditex E-15143 ARTEIXO (A Cor SPAIN		

Goods/Services Subject to Cancellation

<p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are subject to cancellation, namely: Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely, electric switches and electrical transformers; apparatus for recording, transmission or reproduction of sound or images; blank magnetic data carriers, blank compact sound recording discs; blank compact discs, blank recordable DVDs; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; compiler software; fire-extinguishers; computer peripheral devices; anti-glare glasses; eyeglasses; optical lenses; eyeglass chains; contact lenses; eyeglass cords; dressmakers' tape measures; spectacles; spectacle cases; spectacle and eyeglass frames; sunglasses; cases for eyeglasses and for contact lenses; shoes for protection against accidents, irradiation and fire; bullet-proof waistcoats; life jackets; garments and clothes for protection against fire; gloves for divers; gloves for protection against accidents; diving suits; magnetic encoded stored value cards for making purchases at retail stores and magnetic coded gift cards; clothing for protection against accidents, irradiation and fire; protective suits for aviators; electronic agendas; telephone apparatus; weighbridges; directional compasses; accounting machines; protective helmets;</p>

protective helmets for sports; telescopes; chronographs for use as specialized time recording apparatuses; measuring spoons; pedometers; prerecorded compact discs featuring audio and video recordings of music, films, and digital photos; optical mirrors; binoculars; temperature indicators; chains and cords for eyeglasses; computer game programs; cassette players; bar code readers; signal, magic and optical lanterns; magnifying glasses; dictating and automating billing machines for processing accounting information; bathroom scales; electric, galvanic and solar batteries; computer operating programs; electronic pocket translators; transistors; thermometers not for medical purposes; intercommunication apparatus, namely, interoperable communication system designed to provide radio, streaming video, wireless internet, and VOIP phone; blank video cassettes and prerecorded video cassettes featuring music, films and recorded images of photos; portable radio-telephones in the nature of walkie-talkies; downloadable electronic publications in the nature of brochures, books, and manuals in the field of textiles, retail services, fashion and business administration; egg timers; acoustic sound alarms; anti-theft warning apparatus, namely, anti-theft burglar alarms; fire alarms; mouse pads; loudspeakers; amplifiers; aerials; anti-glare visors for helmets; music headphones; answering machines; false coin detectors; teeth protectors for sports; money counting and sorting machines; apparatus for measuring the thickness of skins and leather; electronic tags for goods; goggles for sports; magnets; light-emitting electronic pointers; mobile telephones; enlarging apparatus for photography in the nature of viewfinders; apparatus and instruments for astronomy in the nature of astrometric measuring instruments; thermionic valves; coin-operated musical juke boxes; scales; life-saving rafts; tape recorders; head cleaning tapes for video recording machines, videotapes recorded with animation; blank magnetic tapes for tape recorders and blank magnetic disks; demagnetizing apparatus for magnetic tapes; barometers; thermostats; cinematographic cameras; camcorders; video game cartridges; magnetic encoders; graduated glassware; revolution counters; slides for photography; slide projectors; dynamometers; reflecting discs for wear, for the prevention of traffic accidents; hemline markers; dosimeters; covers for electric outlets; radiotelephony sets; scanners; cases for optical articles, namely, compact disks, optical mirrors, optical readers; flash-bulbs for use in photography; photocopiers; hologram apparatus; compact disc players; luminous signs; neon signs; video recorders; electric textile measuring instruments; speaking tubes; computer memories; microphones; microprocessors; modems; breathing apparatus for underwater swimming; microscope objectives; ozonizers; projection screens; electric switches; dog whistles; electronic push buttons for bells; radios; audio-receivers and video-receivers; wrist rests for use with computers; lever scales; television; record players; word processors; video telephones; carrying cases for mobile computers, tablet computers, mobile telephones, smartphones, electronic book readers; smartphones; smart watches; magnetic wires; [galvanizing apparatus] * galvanometers *; electrodes; personal stereos; cameras

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Abandonment	Trademark Act Section 14(3)
Other	Lack of intent to use before application was filed.

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	88501889	Application Date	07/05/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MD AUDIO ENGINEERING		

Design Mark	MD AUDIO ENGINEERING
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2011/08/25 First Use In Commerce: 2011/08/25 Automobile sound systems comprised of amplifiers, speakers, and subwoofers

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MD AUDIO		
Goods/Services	automobile sound systems comprised of amplifiers, speakers, and subwoofers		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MD AUDIO ENGINEERING, INC.		
Goods/Services	automobile sound systems comprised of amplifiers, speakers, and subwoofers		

Attachments	88501889#TMSN.png(bytes) 200629le.PetCanc MD.pdf(197885 bytes)
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Signature	/Jesus Sanchelima/
Name	Jesus Sanchelima
Date	06/30/2020

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

In Re:

Registration No. 5876508

Registration date: October 8, 2019

Filing date: March 16, 2018

Mark: MD

For:

Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely, electric switches and electrical transformers; apparatus for recording, transmission or reproduction of sound or images; blank magnetic data carriers, blank compact sound recording discs; blank compact discs, blank recordable DVDs; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; compiler software; fire-extinguishers; computer peripheral devices; anti-glare glasses; eyeglasses; optical lenses; eyeglass chains; contact lenses; eyeglass cords; dressmakers' tape measures; spectacles; spectacle cases; spectacle and eyeglass frames; sunglasses; cases for eyeglasses and for contact lenses; shoes for protection against accidents, irradiation and fire; bullet-proof waistcoats; life jackets; garments and clothes for protection against fire; gloves for divers; gloves for protection against accidents; diving suits; magnetic encoded stored value cards for making purchases at retail stores and magnetic coded gift cards; clothing for protection against accidents, irradiation and fire; protective suits for aviators; electronic agendas; telephone apparatus; weighbridges; directional compasses; accounting machines; protective helmets; protective helmets for sports; telescopes; chronographs for use as specialized time recording apparatuses; measuring spoons; pedometers; prerecorded compact discs featuring audio and video recordings of music, films, and digital photos; optical mirrors; binoculars; temperature indicators; chains and cords for eyeglasses; computer game programs; cassette players; bar code readers; signal, magic and optical lanterns; magnifying glasses; dictating and automating billing machines for processing accounting information; bathroom scales; electric, galvanic and solar batteries; computer operating programs; electronic pocket translators; transistors; thermometers not for medical purposes; intercommunication apparatus, namely, interoperable communication system designed to provide radio, streaming video, wireless internet, and VOIP phone; blank video cassettes and prerecorded video cassettes featuring music, films and recorded images of photos; portable radio-telephones in the nature of walkie-talkies; downloadable electronic publications in the nature of brochures, books, and manuals in the field of textiles, retail services, fashion and business administration; egg timers; acoustic sound alarms; anti-theft warning apparatus, namely, anti-theft burglar alarms; fire alarms; mouse pads; loudspeakers; amplifiers; aerials; anti-glare visors for helmets; music headphones; answering machines; false coin detectors; teeth protectors for sports; money counting and sorting machines; apparatus for measuring the thickness of skins and leather; electronic tags for goods; goggles for sports; magnets; light-emitting electronic pointers; mobile telephones; enlarging apparatus for photography in the nature of viewfinders; apparatus and instruments for astronomy in the nature of astrometric measuring instruments; thermionic valves; coin-operated musical juke boxes; scales; life-saving rafts; tape recorders; head

*cleaning tapes for video recording machines, videotapes recorded with animation; blank magnetic tapes for tape recorders and blank magnetic disks; demagnetizing apparatus for magnetic tapes; barometers; thermostats; cinematographic cameras; camcorders; video game cartridges; magnetic encoders; graduated glassware; revolution counters; slides for photography; slide projectors; dynamometers; reflecting discs for wear, for the prevention of traffic accidents; hemline markers; dosimeters; covers for electric outlets; radiotelephony sets; scanners; cases for optical articles, namely, compact disks, optical mirrors, optical readers; flash-bulbs for use in photography; photocopiers; hologram apparatus; compact disc players; luminous signs; neon signs; video recorders; electric textile measuring instruments; speaking tubes; computer memories; microphones; microprocessors; modems; breathing apparatus for underwater swimming; microscope objectives; ozonizers; projection screens; electric switches; dog whistles; electronic push buttons for bells; radios; audio-receivers and video-receivers; wrist rests for use with computers; lever scales; television; record players; word processors; video telephones; carrying cases for mobile computers, tablet computers, mobile telephones, smartphones, electronic book readers; smartphones; smart watches; magnetic wires; [galvanizing apparatus] * galvanometers *; electrodes; personal stereos; cameras in International class 009*

The above-identified goods shall be referred to as “Respondent’s Goods”.

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

MD AUDIO ENGINEERING, INC.

Petitioner,

v.

Cancellation No.

GRUPO MASSIMO DUTTI, S.A.

Respondent,

_____ /

PETITION FOR CANCELLATION

Petitioner MD Audio Engineering, Inc., a corporation organized under the laws of Florida having a business address at 6941 NW 42nd Street Miami, Florida 33166 (“Petitioner”), believes that it is damaged by registration of the mark “MD” (“Respondent’s Mark”), the subject of U.S. Registration No. 5,876,508 (“Respondent’s Registration”) issued on March 16, 2018 to Grupo Massimo Dutti, S.A., a corporation formed under the laws of Spain having a business address at Avenida de la Diputación, Edificio Inditex E-15143 Arteixo, Spain (“Respondent”).

Accordingly, Petitioner hereby petitions to cancel Respondent’s Registration. As grounds for this petition, Petitioner alleges as follows:

I. FACTS

A. Petitioner and its Marks

1. Petitioner has been continuously using the marks “MD AUDIO” and “MD AUDIO ENGINEERING” and “MD AUDIO ENGINEERING INC” in interstate commerce in the United States in marketing and selling a variety of automobile sound systems including amplifiers, speakers and subwoofers prior to the filing date of Respondent’s Registration.

2. Petitioner has been continuously using the trade names “MD AUDIO”, “MD AUDIO ENGINEERING”, and “MD AUDIO ENGINEERING INC” for many years prior to the filing date in Petitioner’s Registration. Petitioner’s marks and trade names, as identified in paragraphs 1 and 2, are referred to as “Petitioners Marks.”

3. Petitioner filed application Serial No. 88,501,889 on July 05, 2019 for the mark MD AUDIO ENGINEERING in connection with the following listed goods: automobile sound systems comprised of amplifiers, speakers, and subwoofers in International class 009 (date of first use and first use in commerce of August 25, 2011). These goods are referred to as “Petitioner’s Goods.”

4. As a result of Petitioner’s years of continuous use of Petitioner’s Marks such as through its promotional, marketing, advertising, and sales activities—consumers and purchasers have come to recognize and rely upon Petitioner’s Marks to represent and symbolize the tremendous goodwill and business reputation enjoyed by Petitioner and its goods and services.

5. Petitioner’s application serial No. 88,501,889 was rejected based on Respondent’s above referenced mark registration under Section 2(d) of the Lanham Act.

B. Respondent and its Mark

6. On March 16, 2018, Respondent filed an application to register the mark MD for Respondent’s Goods as identified above in the United States Patent and Trademark Office (“Respondent’s Mark”).

7. Prior to the filing of the application for Respondent’s Mark, Respondent was aware of the existence of Petitioner and Petitioner’s Marks.

8. Respondent’s application matured in registration No. 5,876,508 with the United States Patent and Trademark Office dated October 8, 2019.

II. GROUNDS: PRIORITY AND LIKELIHOOD OF CONFUSION

9. Petitioner commenced using and has continued to use Petitioner's Marks in commerce prior to the filing date of Respondent's Registration.

10. Petitioner commenced using and has continued to use Petitioner's Marks in commerce prior to Respondent's adoption and first use in commerce of the mark MD.

11. Petitioner has never authorized Respondent to use or register Respondent's Mark.

12. The goods listed in Respondent's Registration are identical or related to Petitioner's goods marketed and sold under Petitioner's Marks.

13. Respondent's Mark and Petitioner's Marks are confusing similar as they share the dominant portion "MD".

14. Respondent's Mark so resembles Petitioner's Marks as to be likely to cause confusion, mistake or deception as to the origin, source or sponsorship of Respondent's goods when compared to the goods and/or services marketed and sold under Petitioner's Marks.

15. Respondent's Registration, if permitted to continue to be registered, will lessen the capacity of Petitioner to identify, distinguish and sell its goods and/or services under Petitioner's Mark, thereby causing harm and damage to Petitioner.

III. GROUNDS: LACK OF *BONA FIDE* INTENT TO USE

16. Respondent did not have a *bona fide* intent to use Respondent's Mark in United States commerce on or in connection with Respondent's Goods when it filed the mark application on March 16, 2018.

17. Respondent's Registration is therefore void *ab initio* as to the entire International class 009.

IV. GROUNDS: ABANDONMENT

18. Registrant has discontinued and/or not used in commerce the mark MD for Respondent's Goods.

19. Registrant's lacks an intent to use and/or resume use of the mark MD for Respondent's Goods.

20. Thus, Registrant has abandoned its mark "MD".

V. DAMAGES

21. Petitioner is damaged by Respondent's Registration since Petitioner cannot avail itself to the benefits of the Lanham Act.

WHEREFORE, Petitioner prays that Respondent's Registration identified with Reg. No. 5,876,508 be cancelled.

Date: June 30, 2020

Respectfully submitted,

/s/ Jesus Sanchelima
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