

ESTTA Tracking number: **ESTTA1153377**

Filing date: **08/16/2021**

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

Proceeding	92077193
Party	Plaintiff Meredith's Inc.
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Date	08/16/2021
Attachments	Amended Petition to Cancel - DRIFTWOOD.pdf(132058 bytes)

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

In the matter of trademark Registration No. 4,593,033
For the mark: DRIFTWOOD
Date Registered: August 26, 2014

_____)	
Merediths' Inc.)	Cancellation No. 92077193
)	
	Petitioner)	
v.)	
)	
Kimberly L. Poe)	
)	
	Registrant)	
_____)	

AMENDED PETITION TO CANCEL

Petitioner's name, address and entity information is as follows: Merediths' Inc., an Indiana corporation, having a principle place of business at 800 South 7th St, Richmond, Indiana 47374.

To the best of Petitioner's knowledge the name and address of the current owner of the registration is: Kimberly L. Poe, 426 Tulip Dr., Sebastian, FL 32958.

The above-identified Petitioner believes that it will be damaged by the above-identified registration, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Registrant filed application Serial No. 86/235,819 on March 28, 2014. The application sought registration of the DRIFTWOOD mark for, *inter alia*, "coatings, namely, stains and clear finishes for exterior and interior use; wood stains" in International Class 12. The

application further stated that the applicant first used the DRIFTWOOD mark in commerce for such goods at least as early as 02/12/2013.

2. Trademark Registration No. 4,593,033 issued from the '819 application on is August 26, 2014. The '033 registration is for the mark DRIFTWOOD for, *inter alia*, "coatings, namely, stains and clear finishes for exterior and interior use; wood stains" in International Class 12.

3. As of March 28, 2014, Registrant was not substantially exclusively using the term DRIFTWOOD in commerce for coatings and wood stains.

4. At least as of 2005, multiple sources were using the term "driftwood" to describe driftwood gray-colored coatings and wood stains.

5. At least as early as December 2005, Merediths' Inc was using the term "driftwood" to describe driftwood gray-colored coatings and wood stains by using that term to describe a color option for stains and clear finishes for exterior and interior use, including wood stains.

6. At least as of March 28, 2014, multiple sources were using the term "driftwood" to describe driftwood gray-colored coatings and wood stains.

7. Registrant's products sold under the DRIFTWOOD mark are coatings and stains marketed and used to give wood surfaces the appearance of weathered, reclaimed, gray driftwood.

8. Registrant's products sold under the DRIFTWOOD mark are coatings and stains marketed as a weathered wood finish gray wood stain used to to create a driftwood weathered wood finish on unfinished wood.

9. The term "DRIFTWOOD" is generic with respect to driftwood gray-colored coatings and wood stains because it generically describes coatings and wood stains offered in

the driftwood gray color option, including driftwood gray-colored stains and clear finishes for exterior and interior use, and driftwood gray-colored wood stains.

10. The genus of the goods is coatings and wood stains.

11. The relevant public is the public at large.

12. The relevant public understands the term “driftwood” to refer to a key aspect of the genus, namely it describes coatings and wood stains offered in the driftwood gray color option and/or it describes gray coatings and wood stains used to to create a driftwood weathered wood finish on unfinished wood.

13. Upon information and belief, the Registration was obtained through fraud on the U.S. Patent and Trademark Office, namely Registrant knowingly made a false, material representation by claiming substantially exclusive use of DRIFTWOOD for coatings and wood stains in order to obtain the ‘033 Registration.

14. Upon information and belief, when Registrant filed the application to obtain the ‘033 registration, Registrant knew that Registrant was *not* substantially the only entity using the term with respect to coatings and wood stains.

15. At least as of March 28, 2014, Registrant knew that multiple sources were using the term “driftwood” to describe driftwood gray-colored coatings and wood stains.

16. Registrant’s false representation was material to the registerability of the mark.

17. Registrant made the false representation with the intent to deceive the USPTO.

18. Petitioner has a commercial interest in selling coatings and wood stains using the term DRIFTWOOD.

19. Petitioner’s ability to continue to use the DRIFTWOOD description in connection with its coatings and wood stains is threatened by the ‘033 Registration. In particular, Registrant

has sought and obtained the removal of Petitioner's products from internet sales sites that use the "driftwood" description to identify Petitioner's driftwood gray-colored coatings and wood stains.

WHEREFORE, Petitioner files this Petition to Cancel and prays that the Registration be cancelled in its entirety, or in the alternative partially cancelled to the extent the mark is the generic name for the goods or services, or a portion thereof, for which it is registered, or in the alternative partially cancelled to the extent the registration was obtained fraudulently, and for such other and further relief as may be deemed to be just and proper.

The filing fee of \$600.00 is presented herewith. Please credit any overpayment or charge any deficit to deposit account 23-3030.

Respectfully submitted,

By: /Charles J. Meyer/

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being sent via email this August 16, 2021 to:

Kimberly L. Poe
426 Tulip Dr.
Sebastian, FL 32958
Email: info@diydriftwood.com

By: /Charles J. Meyer/
Charles J. Meyer