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Filing date: **04/19/2022**

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	PEACHBULK PTY LTD		
Entity	Aus. Proprietary Co., limited	Citizenship	Australia
Address	PO BOX 7477 ST. KILDA ROAD MELBOURNE, VIC 3004 AUSTRALIA		
Attorney information	ERIC PERROTT, ESQ. GERBEN PERROTT, PLLC 1050 CONNECTICUT AVE NW SUITE 1050 WASHINGTON, DC 20036 UNITED STATES Primary email: eperrott@gerbenlawfirm.com No phone number provided		
Docket no.	07531-0030		

**Registration subject to cancellation**

Registration no.	4347022	Registration date	06/04/2013
Register	Principal		
Registrant	Mary Kay Inc. 16251 DALLAS PARKWAY ADDISON, TX 75001 UNITED STATES		

**Goods/services subject to cancellation**

Class 003. First Use: Jan 7, 2013 First Use In Commerce: Jan 7, 2013  
All goods and services in the class are subject to cancellation, namely: Fragrances for personal use;  
Non-medicated skin care preparations; Non-medicated toiletries

**Grounds for cancellation**

Abandonment	Trademark Act Section 14(3)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	HEARTFELT_Cancellation_April 19 2022.pdf(81514 bytes )
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Signature	/Sophie Edbrooke/
Name	Sophie Edbrooke, Esq., Authorized Attorney, MD Bar Member
Date	04/19/2022

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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PEACHBULK PTY LTD,

Petitioner,

v.

Mary Kay Inc.,

Registrant,

Cancellation No.: \_\_\_\_\_

Mark: HEARTFELT

Registration No: 4347022

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**PETITION TO CANCEL**

PEACHBULK PTY LTD (hereinafter referred to as “Petitioner”), an Australian proprietary company, limited by shares, hereby petitions for the cancellation of Registration No. 4347022 for the mark HEARTFELT, registered to Mary Kay Inc., a Delaware corporation (hereinafter referred to as “Registrant”).

As grounds for the cancellation, Petitioner states as follows:

1. Petitioner is an Australian proprietary company, limited by shares.
2. The United States Patent and Trademark Office (“USPTO”) records identify Registrant, a Delaware corporation with an address of 16251 Dallas Parkway, Addison Texas, 75001 as the owner of U.S. Registration 4347022 (“Registrant’s Registration”) for the mark HEARTFELT (“Registered Mark”), for “Fragrances for personal use; Non-medicated skin care preparations; Non-medicated toiletries” in International Class 3 (“Registrant’s Goods”).
3. Petitioner owns the HEARTFELT trademark (“Petitioner’s Mark”) for body care products, skin care preparations, and cosmetics (“Petitioner’s Goods”).

4. Petitioner applied to register its HEARTFELT trademark and was assigned serial number 79237230 (“Petitioner’s Application”).

5. The USPTO has cited the Registrant’s Registration against the Petitioner’s Application as a bar to registration based on a likelihood of confusion.

### **ABANDONMENT**

6. Registrant has abandoned the mark without intent to resume use of the mark.

7. Upon information and belief, Registrant has not sold Registrant’s Goods in connection with the Registered Mark since on or before January 16, 2019, entitling the Petitioner to a presumption that the Registered Mark has been abandoned.

8. Upon information and belief, Registrant has abandoned the Registered Mark with no intent to resume use and, therefore, the Registered Mark is abandoned and no longer entitled to continued registration with the USPTO.

9. Petitioner’s research has uncovered the following factual basis for its claims. All allegations made on information and belief may be proven with information solely within control of Registrant:

- a. Petitioner’s search of the internet finds no advertising or offerings for goods bearing the Registered Mark in the United States.
- b. Petitioner’s search of the relevant marketplaces finds no advertising or offerings for goods bearing the Registered Mark in the United States.
- c. Petitioner’s search of Registrant’s website finds no web page that mirrors the one Registrant submitted in its §8 Declaration of Use.

### **FRAUD**

10. Upon information and belief, Registrant knowingly misrepresented its “use in commerce” specimen submitted on May 29, 2019 in Registrant’s §8 Declaration of Use.

11. Upon information and belief, Registrant knowingly submitted a mock-up webpage that was not accessible to consumers.

12. Upon information and belief, Registrant was not engaged in a bona fide use of the HEARTFELT mark on Registrant’s Goods at the time Registrant submitted its §8 Declaration of Use.

13. On May 29, 2019, Registrant, signed a sworn statement that:

Unless the owner has specifically claimed excusable nonuse, the mark is in use in commerce on or in connection with the goods/services or to indicate membership in the collective membership organization identified above, as evidenced by the attached specimen(s).

...

Unless the owner has specifically claimed excusable nonuse, the specimen(s) shows the mark as currently used in commerce on or in connection with the goods/services/collective membership organization.

...

To the best of the signatory’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

...

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of this submission and the registration, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

14. Upon information and belief, Registrant knew that it was not selling, and had not sold for at least three years, products in the U.S. under the Registrant’s Mark on Registrant’s Goods and misrepresented this to the USPTO to secure continuing registration to which it was not entitled.

15. As a valid signed statement is required for renewal of a trademark registration under Section 8 of the Lanham Act, Registrant's false statements are material to the continued registration of the Registered Mark.

16. Registrant has knowingly committed fraud through its reckless disregard for the truth and Registrant's Registration should be cancelled.

17. By reason of all the foregoing, Petitioner will be gravely damaged by the continued registration of the Registered Mark.

**WHEREFORE**, Petitioner, damaged by Registration No. 4347022, prays that the same be cancelled immediately, and that this Petition for Cancellation be sustained in favor of Petitioner.

Dated: April 19, 2022

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E Perrott', with a stylized flourish at the end.

Eric Perrott, Esq.  
Sophie Edbrooke, Esq.  
Attorneys for Petitioner  
Gerben Perrott, PLLC  
1050 Connecticut Ave NW, Suite 500  
Washington, DC 20036  
Phone: 202.294.2287  
Email: [eperrott@gerbenlawfirm.com](mailto:eperrott@gerbenlawfirm.com)  
[sedbrooke@gerbenlawfirm.com](mailto:sedbrooke@gerbenlawfirm.com)