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Filing date: **11/18/2022**

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	Walmart Apollo, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	702 SW 8TH STREET BENTONVILLE, AR 72716 UNITED STATES		
Attorney information	DANIEL BRUCE KUTAK ROCK LLP 1650 FARNAM STREET OMAHA, NE 68102 UNITED STATES Primary email: daniel.bruce@kutakrock.com Secondary email(s): trademarks.bruce@kutakrock.com, walmarttm@kutakrock.com, dsdocketuswmt@dinsmore.com, ustm@walmartlegal.com 402-346-6000		
Docket no.			

Registration subject to cancellation

Registration no.	5337995	Registration date	11/21/2017
Register	Principal		
Registrant	7 THRASIO SEVEN, INC. 85 WEST STREET WALPOLE, MA 02081 UNITED STATES		

Goods/services subject to cancellation

Class 012. First Use: May 20, 2015 First Use In Commerce: May 20, 2015
All goods and services in the class are subject to cancellation, namely: Wastebaskets specially adapted for fitting in vehicles; Fitted car seat covers; Fitted vehicle seat covers

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. registration no.	5261404	Application date	11/27/2013
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Register	Principal		
Registration date	08/08/2017	Foreign priority date	NONE
Word mark	AUTO DRIVE		
Design mark			
Description of mark	The mark consists of The word "AUTO DRIVE" in a image of a shield.		
Goods/services	<p>Class 003. First use: First Use: Feb 8, 2016 First Use In Commerce: Feb 8, 2016 All purpose cleaning preparations; automobile tire cleaning and polishing preparations; automobile, tire, glass and wheel cleaning preparations; cleaning and polishing preparations; cleaning and washing preparations for automobiles; automobile polishing preparations; cloths impregnated with a detergent for cleaning; automotive washes; windscreen cleaning liquids; cleaning preparations, namely, order eliminators and neutralizers not for personal use</p> <p>Class 009. First use: First Use: Jan 2014 First Use In Commerce: Jan 2014 Directional compasses; Thermometers; Cell phone battery chargers for use in vehicles; CD storage wallets; holders for phones and global position devices; automotive safety warning lights, namely, strobes, rotating and bar lights</p> <p>Class 011. First use: First Use: Jan 2014 First Use In Commerce: Jan 2014 Lights for vehicles; Tail lights for vehicles; Light bulbs; LED light bulbs</p> <p>Class 012. First use: First Use: Jan 6, 2014 First Use In Commerce: Jan 6, 2014 Sun shields and visors for motor cars; vehicle seat covers; Mirrors for vehicles, namely, rear view, vanity, and side mirrors; License plate frames; Gear lever knobs for vehicles; Drink holders for vehicles; Steering wheel covers; windshield wiper blades; fitted fabric covers for vehicle seat belts; ashtrays specifically adapted for automobiles; aftermarket automobile accessories, namely, car interior organizer bags, nets and trays specifically adapted for fitting in vehicles; seat cushions, and windshield sunshades</p> <p>Class 016. First use: First Use: Mar 2016 First Use In Commerce: Mar 2016 Bumper stickers; Stickers; Decals; Decorative decals for vehicle windows; Printed emblems; Personal organizers</p> <p>Class 021. First use: First Use: Oct 20, 2008 First Use In Commerce: Oct 20, 2008 buckets; cleaning sponges; automobile wheel cleaning brushes; washing brushes; cleaning mitts of fabric</p> <p>Class 027. First use: First Use: Feb 10, 2014 First Use In Commerce: Feb 10, 2014 floor mats for vehicles</p>		

U.S. registration no.	5256546	Application date	11/27/2013
Register	Principal		
Registration date	08/01/2017	Foreign priority date	NONE
Word mark	AUTO DRIVE		
Design mark			
Description of mark	NONE		
Goods/services	<p>Class 003. First use: First Use: Feb 8, 2016 First Use In Commerce: Feb 8, 2016 All purpose cleaning preparations; automobile tire cleaning and polishing prepar-</p>		

	<p>ations; automobile, tire, glass and wheel cleaning preparations; cleaning and polishing preparations; cleaning and washing preparations for automobiles; automobile polishing preparations; automotive washes; windscreen cleaning liquids; cleaning preparations, namely, order eliminators and neutralizers not for personal use</p> <p>Class 009. First use: First Use: Jan 2014 First Use In Commerce: Jan 2014 automotive safety warning lights, namely, strobes, rotating and bar lights</p> <p>Class 012. First use: First Use: Jan 6, 2014 First Use In Commerce: Jan 6, 2014 Vehicle seat covers; License plate frames; Gear lever knobs for vehicles; windshield wiper blades; fitted fabric covers for vehicle seat belts; ashtrays specifically adapted for automobiles; aftermarket automobile accessories, namely, car interior organizer bags, nets and trays specifically adapted for fitting in vehicles; seat cushions and windshield sunshades</p> <p>Class 021. First use: First Use: Oct 20, 2008 First Use In Commerce: Oct 20, 2008 buckets; cleaning sponges; automobile wheel cleaning brushes; washing brushes; cleaning mitts of fabric</p>
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U.S. registration no.	5156356	Application date	04/24/2013
Register	Principal		
Registration date	03/07/2017	Foreign priority date	NONE
Word mark	AUTO DRIVE		
Design mark			
Description of mark	NONE		
Goods/services	<p>Class 009. First use: First Use: Mar 2014 First Use In Commerce: Mar 2014 CD storage wallets; Cell phone battery chargers for use in vehicles; Directional compasses; Thermometers</p> <p>Class 012. First use: First Use: Mar 2014 First Use In Commerce: Mar 2014 Drink holders for vehicles; Fitted covers for vehicles; License plate holders; Mirrors for vehicles, namely, vanity, side view and rear view mirrors; Steering wheel covers; Sun shields and visors for motor cars; Vehicle seat covers; Wastebaskets specially adapted for fitting in vehicles</p> <p>Class 014. First use: First Use: Mar 2014 First Use In Commerce: Mar 2014 Automobile clocks; Clocks</p> <p>Class 016. First use: First Use: Mar 2014 First Use In Commerce: Mar 2014 Bumper stickers; Decals; Decorative decals for vehicle windows; Magnetic bumperstickers; Personal organizers; Printed emblems; Stickers</p> <p>Class 027. First use: First Use: Mar 2014 First Use In Commerce: Mar 2014 Floor mats for vehicles</p>		

Attachments	85913818#TMSN.png(bytes) Petition for Cancellation re DRIVE AUTO PRODUCTS.pdf(371336 bytes)
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Signature	/Daniel Bruce/
Name	Daniel Bruce
Date	11/18/2022

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

*In re Registration No. 5,337,995 for the
trademark DRIVE AUTO PRODUCTS*

WALMART APOLLO, LLC,

Petitioner,

vs.

7 THRASIO SEVEN, INC.,

Registrant

Cancellation No. _____

PETITION FOR CANCELLATION

Petitioner Walmart Apollo, LLC (“Walmart” or “Petitioner”), a company organized and existing under the laws of Delaware with a principal place of business at 702 SW 8th Street, Bentonville, Arkansas 72716, believes that it will be damaged by the continued registration of U.S. Trademark Registration No. 5,337,995 for the mark DRIVE AUTO PRODUCTS in connection with “Wastebaskets specially adapted for fitting in vehicles; Fitted car seat covers; Fitted vehicle seat covers” (the “DRIVE AUTO PRODUCTS Mark”), owned by 7 THRASIO SEVEN, INC. (“Registrant” or “Respondent”), a Massachusetts corporation having an address of 85 West Street, Walpole, Massachusetts 02081, and hereby petitions to cancel such registration on the following grounds:

1. Walmart is multi-national retail corporation operating more than 4,700 stores in the United States and maintains a massive online presence.
2. Walmart is the owner of the AUTO DRIVE trademark (the “Walmart AUTO DRIVE Mark”) in connection with a wide range of automotive products. Walmart has widely used

the AUTO DRIVE mark in connection with automotive products since at least as early as January 2014.

3. Petitioner is the owner of U.S. Trademark Registration No. 5,261,404 for the trademark AUTO DRIVE (and design), applied-for November 27, 2013 and registered August 8, 2017, in connection with All purpose cleaning preparations; automobile tire cleaning and polishing preparations; automobile, tire, glass and wheel cleaning preparations; cleaning and polishing preparations; cleaning and washing preparations for automobiles; automobile polishing preparations; cloths impregnated with a detergent for cleaning; automotive washes; windscreen cleaning liquids; cleaning preparations, namely, order eliminators and neutralizers not for personal use; Directional compasses; Thermometers; Cell phone battery chargers for use in vehicles; CD storage wallets; holders for phones and global position devices; automotive safety warning lights, namely, strobes, rotating and bar lights; Lights for vehicles; Tail lights for vehicles; Light bulbs; LED light bulbs; Sun shields and visors for motor cars; vehicle seat covers; Mirrors for vehicles, namely, rear view, vanity, and side mirrors; License plate frames; Gear lever knobs for vehicles; Drink holders for vehicles; Steering wheel covers; windshield wiper blades; fitted fabric covers for vehicle seat belts; ashtrays specifically adapted for automobiles; aftermarket automobile accessories, namely, car interior organizer bags, nets and trays specifically adapted for fitting in vehicles; seat cushions, and windshield sunshades; Bumper stickers; Stickers; Decals; Decorative decals for vehicle windows; Printed emblems; Personal organizers; buckets; cleaning sponges; automobile wheel cleaning brushes; washing brushes; cleaning mitts of fabric; floor mats for vehicles.

4. The November 27, 2013 priority filing date of Petitioner's Registration No. 5,261,404 for the trademark AUTO DRIVE (and design) predates Registrant's first use of the

AUTO DRIVE PRODUCTS Mark and the filing date of Registrant's Trademark Registration No. 5,337,995.

5. Petitioner is the owner of U.S. Trademark Registration No. 5,256,546 for the trademark AUTO DRIVE, applied-for November 27, 2013 and registered August 1, 2017, in connection with All purpose cleaning preparations; automobile tire cleaning and polishing preparations; automobile, tire, glass and wheel cleaning preparations; cleaning and polishing preparations; cleaning and washing preparations for automobiles; automobile polishing preparations; automotive washes; windscreen cleaning liquids; cleaning preparations, namely, order eliminators and neutralizers not for personal use; automotive safety warning lights, namely, strobes, rotating and bar lights; Vehicle seat covers; License plate frames; Gear lever knobs for vehicles; windshield wiper blades; fitted fabric covers for vehicle seat belts; ashtrays specifically adapted for automobiles; aftermarket automobile accessories, namely, car interior organizer bags, nets and trays specifically adapted for fitting in vehicles; seat cushions and windshield sunshades; buckets; cleaning sponges; automobile wheel cleaning brushes; washing brushes; cleaning mitts of fabric.

6. The November 27, 2013 priority filing date of Petitioner's Registration No. 5,256,546 for the trademark AUTO DRIVE predates Registrant's first use of the AUTO DRIVE PRODUCTS Mark and the filing date of Registrant's Trademark Registration No. 5,337,995.

7. Petitioner is the owner of U.S. Trademark Registration No. 5,156,356 for the trademark AUTO DRIVE, applied-for April 24, 2013 and registered March 7, 2017, in connection with CD storage wallets; Cell phone battery chargers for use in vehicles; Directional compasses; Thermometers; Drink holders for vehicles; Fitted covers for vehicles; License plate holders; Mirrors for vehicles, namely, vanity, side view and rear view mirrors; Steering wheel covers; Sun shields and visors for motor cars; Vehicle seat covers; Wastebaskets specially adapted for fitting

in vehicles; Automobile clocks; Clocks; Bumper stickers; Decals; Decorative decals for vehicle windows; Magnetic bumper stickers; Personal organizers; Printed emblems; Stickers; Floor mats for vehicles.

8. The April 24, 2013 priority filing date of Walmart's Registration No. 5,156,356 for the trademark AUTO DRIVE predates Registrant's first use of the AUTO DRIVE PRODUCTS Mark and the filing date of Registrant's Trademark Registration No. 5,337,995.

9. Over a period of many years of use across a wide range of automotive products, and as set out in Walmart's trademark filings, Walmart has developed strong rights in its AUTO DRIVE mark, including in connection with vehicle seat covers, car interior organizer bags, nets and trays, and wastebaskets for vehicles.

10. As a result of widespread, continuous, and exclusive use of the Walmart AUTO DRIVE Mark, consumers in the United States have come to strongly associate the well-known Walmart AUTO DRIVE Mark with Walmart and its line of AUTO DRIVE goods. As a result, Petitioner has developed substantial goodwill in the Walmart AUTO DRIVE Mark and owns valid and subsisting federal statutory and common law rights to the Walmart AUTO DRIVE Mark.

11. The Walmart AUTO DRIVE Mark is distinctive and has developed considerable strength, as Petitioner has expended substantial time, money, and resources marketing, advertising, and promoting the goods sold under the Walmart AUTO DRIVE Mark, including to many millions of customers through Petitioner's far-reaching retail outlets.

12. Upon information and belief, Respondent is the current owner of the DRIVE AUTO PRODUCTS Mark, applied-for July 27, 2016 and registered November 21, 2017 in connection with Wastebaskets specially adapted for fitting in vehicles; Fitted car seat covers; Fitted vehicle seat covers.

13. Petitioner began using AUTO DRIVE and applied to register the mark as set out above in connection with highly related and overlapping goods before Respondent or its predecessor in interest used or applied to register DRIVE AUTO PRODUCTS.

14. If Registrant is permitted to maintain its registration for DRIVE AUTO PRODUCTS, the registration will continue to give Registrant a *prima facie* exclusive right to use DRIVE AUTO PRODUCTS for the goods set forth in the registration. Such continued registration would damage and injure Petitioner.

15. Respondent's DRIVE AUTO PRODUCTS Mark is confusingly similar to Petitioner's Walmart AUTO DRIVE Mark. Respondent's mark, DRIVE AUTO PRODUCTS, is confusingly similar to Petitioner's marks due to the inclusion of the identical word parts AUTO and DRIVE that comprise Petitioner's entire mark in its leading and dominant part and for being used on goods that are highly related or identical to the goods associated with Petitioner's AUTO DRIVE mark.

16. The leading DRIVE AUTO portion of Respondent's mark is a mere transposition of the terms comprising Petitioner's AUTO DRIVE mark.

17. The PRODUCTS portion of Respondent's mark is generic and thus does not have significant distinguishing power.

18. Respondent's registration should be cancelled because it consists of or comprises a mark which so resembles Petitioner's previously used and registered AUTO DRIVE mark as to be likely, when used in connection with Respondent's goods, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d), and to cause damage to Petitioner thereby.

19. Petitioner is damaged by the continued registration of the DRIVE AUTO PRODUCTS Mark shown in Registration No. 5,337,995, in that such registration gives Registrant

a *prima facie* exclusive right to the use of the DRIVE AUTO PRODUCTS Mark for the goods in the registration throughout the United States.

20. Petitioner therefore petitions to cancel Registration No. 5,337,995 under Section 14 of the Lanham Act, 15 U.S.C. § 1064.

WHEREFORE, Petitioner prays that Registration No. 5,337,995 be cancelled.

Respectfully submitted,

Dated: November 18, 2022

/s/ Daniel N. Bruce

Daniel N. Bruce
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attorney for Petitioner