

ESTTA Tracking number: **ESTTA187448**

Filing date: **01/18/2008**

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 requests to cancel indicated registration.

Petitioner Information

Name	Yoko O Lennon		
Entity	Individual	Citizenship	JAPAN
Address	One West 72nd Street New York, NY 10023 UNITED STATES		

Attorney information	Dorothy M. Weber Shukat Arrow Hafer Weber & Herbsman, LLP 111 West 57th Street, Suite 1120 New York, NY 10019 UNITED STATES dorothy@musiclaw.com Phone:(212) 245-4580		
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Registration Subject to Cancellation

Registration No	2676604	Registration date	01/21/2003
Registrant	Murphy, Lennon c/o Jeff Pringle, Level 2 Management Group, LLC 2817 West End Avenue, Suite 126, Box 402 Nashville, TN 37203 UNITED STATES		

Goods/Services Subject to Cancellation

Class 009. First Use: 1997/06/00 First Use In Commerce: 1997/06/00 All goods and services in the class are cancelled, namely: MUSICAL SOUND RECORDINGS AND MUSICAL VIDEO RECORDINGS
Class 041. First Use: 1997/06/18 First Use In Commerce: 1997/06/18 All goods and services in the class are cancelled, namely: ENTERTAINMENT SERVICES IN THE NATURE OF LIVE PERFORMANCES BY A MUSICAL GROUP; PROVIDING INFORMATION REGARDING MUSICAL ARTISTS AND PROVIDING RECORDED PERFORMANCES OF MUSICAL ARTISTS BY MEANS OF A GLOBAL COMPUTER NETWORK

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1769796	Application Date	01/13/1992
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Registration Date	05/11/1993	Foreign Priority Date	NONE
Word Mark	JOHN LENNON		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1990/12/15 First Use In Commerce: 1991/01/30 eyewear products comprised of all types of eyeglasses, sunglasses and eyewear accessories; namely, eyeglass cases, chains, frames, and lenses		

U.S. Registration No.	1488395	Application Date	07/27/1987
Registration Date	05/17/1988	Foreign Priority Date	NONE
Word Mark	JOHN LENNON		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1986/02/01 First Use In Commerce: 1986/07/01 PAPER PRODUCTS; SPECIFICALLY TOTE BAGS AND ADDRESS/DATE BOOKS		

Attachments	74237180#TMSN.gif (1 page)(bytes) 73674617#TMSN.gif (1 page)(bytes) LENNON TM Petition to Cancel.pdf (9 pages)(228332 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/dmw/
Name	Dorothy M. Weber
Date	01/18/2008

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

In the matter of Trademark Registration No. 2676604
For the Mark "LENNON"
Date Registered January 21, 2003

Yoko Ono Lennon,

Petitioner,

Cancellation No. _____

v.

Lennon Murphy,

Registrant.

PETITION TO CANCEL

Petitioner Yoko Ono Lennon is the successor in interest to the rights of the late John Lennon.

To the best of petitioner's knowledge, the name and address of the current owner of the registration is:

Lennon Murphy
c/o Jeff Pringle, Level 2 Management Group, LLC
2817 West End Avenue, Suite 126, Box 402
Nashville, TN 37203
United States

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

As grounds for this petition, it is alleged that:

A. Petitioner has Standing

1. John Lennon was a musician and artist whose status as an artistic genius and musical icon of the twentieth century was sealed after his tragic and shocking assassination in 1980. It was his astonishing achievements as a musician, writer, artist and humanitarian throughout his short lifetime for which he became a legend.

2. First known as a founding member of The Beatles, it was through Lennon's solo career that he attained the everlasting recognition and significance reserved for an icon; his music remains as timeless as his message and purpose - as a voice of change and independent thought.

3. The distinctive artistic brilliance that has come to be associated with the Lennon name, likeness, image and trademarks is of inestimable value to his successor: it represents Lennon's inimitable genius and extraordinary talent.

4. Yoko Ono Lennon is the owner of incontestable federal trademark registrations as follows:

i. JOHN LENNON/Registration No. 1488395, granted May 17, 1988, in International Class 16 (paper products, tote bags and address books); and

ii. JOHN LENNON/Registration No. 1769796, granted May 11, 1993, in International Class 9 (eyewear and eyewear accessories).

Two copies of said registrations showing status and title are attached hereto as petitioner's Exhibit "A".

5. The Lennon Marks have acquired and maintained a strong secondary meaning. Such names and trademarks are entitled to protection from misappropriation and misidentification of non-authorized goods and products.

6. The public identifies the Petitioner as the source of, or as being in some way associated with, goods which bear or are marketed with the word "Lennon." The Lennon name and mark is famous and widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner.

7. Petitioner is and has been for many years engaged the extensive publishing, marketing, advertising, and exploitation of the music and artwork of John Lennon. In connection therewith, petitioner has used in interstate commerce the trademarks LENNON and JOHN LENNON since long prior to registrant's date of first use of the trademark LENNON.

B. Likelihood of Dilution by Blurring or Tarnishment

8. Registrant Murphy's appropriation of Petitioner's unique, valuable and exclusive rights in the Lennon Marks and the registration of her mark "Lennon" on the principal register has and will continue to cause damage and harm to the Petitioner as a result of, *inter alia*,

a likelihood of dilution by blurring or dilution by tarnishment pursuant to 15 U.S.C. section 1125(c).

9. Murphy has used the mark Lennon in commerce in ways that are likely to cause dilution by blurring tarnishment of the famous mark that impairs its distinctiveness. She has engaged publicly in conduct which suggests not only her awareness of the confusion that her actions have caused and are causing, but that they are, indeed, designed to harness and exploit the popularity of John Lennon and the Lennon Marks.

10. These promotional campaigns have been executed with blatant disregard for the fact that said Lennon Marks are immutably associated by the public, with Petitioner. The use in interstate commerce by registrant of its Infringing Mark in connection with the advertising, distribution, offering for sale, and sale of music and apparel is likely to cause confusion and dilution by blurring and dilution by tarnishment.

C. Murphy Fraudulently Obtained her Registration

11. On or about April 11, 2001 Murphy filed an application in the United States Patent and Trademark Office (“USPTO”) for registration, on an intent-to-use basis, of the trademark “LENNON” (the “Infringing Mark”) in International Classes 9 (“musical sound recordings and musical video recordings”) and 41 (“entertainment services in the nature of performances by a musical group; providing information regarding musical artists and

providing recorded performances of musical artists by means of a global computer network”). This application was assigned Serial Number 76-239,439 (the “ITU Application”).

12. Nowhere in the ITU Application did Murphy disclose that the mark “LENNON” was actually her first name.

13. Indeed, on or about January 7, 2002, the USPTO refused registration of the ITU Application in its Final Office Action pursuant to Section 2(e)(4) of the Lanham Act, on the basis that the mark LENNON was primarily merely a surname.

14. Thereafter, Murphy filed a “Request for Reconsideration” with the USPTO, and “Notice of Appeal and Request for Suspension” with the Trademark Trial and Appeal Board (the “TTAB”). The basis for the request and the Appeal was the mark “LENNON” had acquired distinctiveness under Section 2(f) of the Lanham Act.

15. In order to meet the requirements of Section 2(f), on or about July 3, 2002, registrant filed an “Amendment to Allege Use Under 37 CFR 2.76 With Declaration” (the “Amendment”), by which Murphy summarily converted the ITU Application to an application based on her newly alleged use of the mark LENNON in commerce – *for the preceding five (5) years* (the “Amended Application”).

16. In her Declaration which accompanied the Amendment,

Murphy swore (under the penalties of 18 U.S.C. §1001), that she has been using the mark “LENNON” continuously in both Classes 9 and 41 since June of 1997.¹ She further claimed that “as a result of my extensive use, advertising and promotion of my mark LENNON for over five years, my mark has become distinctive of my services.” These statements, upon information and belief, are untrue.

17. On January 21, 2003, the mark was registered by the USPTO, bearing Registration No. 2,676,604 (the “Registration”).

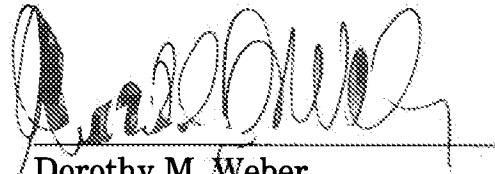
18. Thus, Murphy, by both failing to identify in either her ITU Application or her Amended Application, that the mark sought, LENNON was, in fact, her own given name, in violation of 15 U.S.C. §1052(e)(4), as well as her misrepresentations of actual use of the mark in commerce in violation of 15 U.S.C. § 1064(3), Murphy obtained the Registration through deliberate deceit and misrepresentation, with full knowledge of the falsity thereof, which has caused the Petitioner direct and substantial detriment.

19. But for these material and willful misrepresentations, the mark would not have been registered.

¹ Registrant was fifteen (15) years old in 1997.

WHEREFORE, Petitioners pray that Registration No. 2,676,604 be canceled immediately, and that this Petition for Cancellation be sustained in favor of Petitioner, with costs and legal fees awarded, if appropriate, pursuant to the Federal Rules of Civil Procedure and the Rules of the PTO and the TTAB.

By:



Dorothy M. Weber
Attorney for Petitioner
Shukat Arrow Hafer Weber
& Herbsman LLP
111 West 57th Street, Suite 1120
New York, New York 10019
(212) 245-4580

Date: New York, New York
January 18, 2008

EXHIBIT A

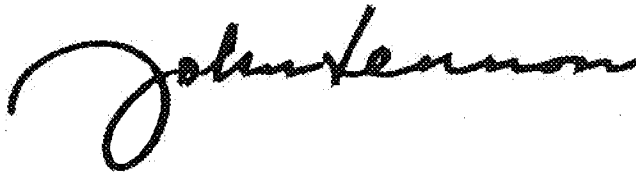
Int. Cl.: 9

Prior U.S. Cls.: 2 and 26

United States Patent and Trademark Office

Reg. No. 1,769,796
Registered May 11, 1993

**TRADEMARK
PRINCIPAL REGISTER**



LENNON, YOKO ONO (JAPAN CITIZEN), DBA
EXECUTRIX OF THE JOHN LENNON
ESTATE, A NEW YORK ESTATE
1 WEST 72ND STREET
NEW YORK, NY 10023

FOR: EYEWEAR PRODUCTS COMPRISED
OF ALL TYPES OF EYEGLASSES, SUNGLASS-
ES AND EYEWEAR ACCESSORIES; NAMELY,

EYEGLOSS CASES, CHAINS, FRAMES, AND
LENSES, IN CLASS 9 (U.S. CLS. 2 AND 26).
FIRST USE 12-15-1990; IN COMMERCE
1-30-1991.

OWNER OF U.S. REG. NO. 1,488,395.

SER. NO. 74-237,180, FILED 1-13-1992.

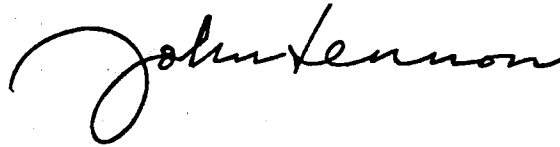
SASHA CARTER, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 37 and 38

United States Patent and Trademark Office **Reg. No. 1,488,395**
Registered May 17, 1988

**TRADEMARK
PRINCIPAL REGISTER**



EXECUTRIX FOR THE ESTATE OF JOHN
LENNON, THE (NEW YORK ESTATE)
1 WEST 72ND STREET
NEW YORK, NY 10023

FOR: PAPER PRODUCTS; SPECIFICALLY
TOTE BAGS AND ADDRESS/DATE BOOKS,
IN CLASS 16 (U.S. CLS. 2, 37 AND 38).

FIRST USE 2-1-1986; IN COMMERCE
7-1-1986.

THE NAME "JOHN LENNON" IN THE
MARK IDENTIFIES A FAMOUS MUSICIAN,
NOW DECEASED.

SER. NO. 674,617, FILED 7-27-1987.

HENRY S. ZAK, EXAMINING ATTORNEY