

Traditions believes it will be damaged by the continued registration and use of the Mark, and hereby petitions to cancel the Registration.

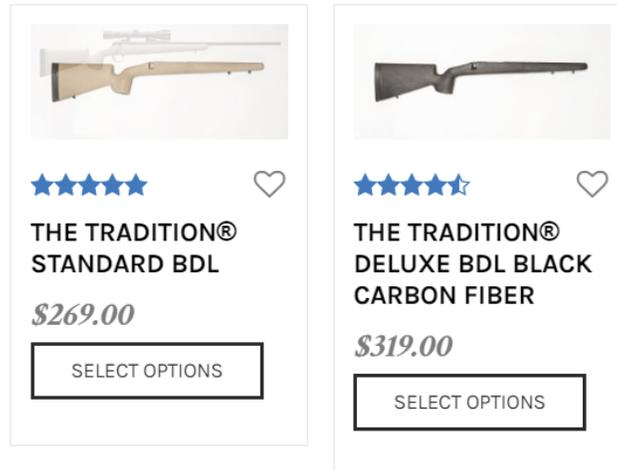
As a business which has been engaged in the development and sales of firearms for over thirty-six years, and utilizes the “Traditions” word for its branding and marketing materials, as well as its products sold, Petitioner has a direct and personal stake in the outcome of the proceeding. The continued presence of the Registration on the federal trademark register constitutes an obstacle to Petitioner’s current and future use of the brand name “Traditions” for all of its product lines, products sold, and marketing materials, advertisements, and corporate sponsorships. The Registration, thus, is causing injury and damage to Petitioner, and Petitioner has standing to challenge it.

Traditions hereby petitions to cancel the Registration under Section 14 of the Trademark Act of 1947, 15 U.S.C. § 1064. In the alternative, Traditions petitions that the Registration be transferred to Traditions under Section 18 of the Trademark Act of 1947, 15 U.S.C. § 1068.

The Trademark Trial and Appeal Board (“TTAB” or “the Board”) is an administrative adjudicatory tribunal within the USPTO. The TTAB has jurisdiction to cancel the subject Registration. *See* 15 U.S.C. §1064, 1067; *see also* 37 C.F.R. §2.111. A petition to cancel is timely filed if it is within five years from the date of the registration of the Mark. 15 U.S.C. §1064(2).

The grounds for cancellation are as follows:

1. Registrant McMillan Group International, LLC, an entity associated with McMillan Fiberglass Stocks, filed to register the mark “TRADITION” on May 8, 2017 in class 013 for firearms. Registrant did not claim first use in commerce until October 17, 2018. This appears to be the date McMillan began selling two hunting stocks bearing the Tradition name: the Tradition Standard BDL, and the Tradition Deluxe BDL Black Carbon Fiber:



Upon information and belief, these are the only McMillan products that bear the “Tradition” name.

2. Traditions Performance Firearms began manufacturing and selling firearms bearing the “Traditions” name as early as 1983. Traditional Sporting Goods, Inc. was incorporated under the laws of the state of Connecticut in 1991 and has maintained registration and operated under this name continuously since incorporation. (See Exhibit A –C.O.N.C.O.R.D. Data.)

3. Petitioner registered the domain www.traditionsfirearms.com on April 26, 2000 and has maintained a continuous web presence at this URL for the advertisement and sale of its products bearing the Traditions name for the past twenty years.

4. Petitioner sells a wide range of products predominantly in the 013 firearms class, including but not limited to: rifles, pistols, muzzleloaders, revolvers, cannons, component parts for firearms, bullets, cartridges, loading tools, cleaning implements, scopes, sights, and even kits for customers to build their own rifles, pistols, and cannons.¹

5. These products, as well as their packaging and advertisements, all bear the “Traditions” name, which has been used in commerce in connection with the sale of firearms,

¹ A catalog of Traditions’ product line is available at https://www.traditionsfirearms.com/data/home/2020_TraditionsCatalog_Final_LoRes.pdf.

muzzleloaders, and firearms accessories since 1983 – more than thirty-six years of continuous use of the Traditions name.

6. The “Traditions” name is synonymous in the firearms and muzzleloading industry with Petitioner and its products.

COUNT I
THE TRADEMARK IS VOID BECAUSE THE REGISTRANT
IS NOT THE OWNER OF THE MARK

7. Petitioner incorporates paragraphs 1-6 by reference.

8. “It is axiomatic in trademark law that the standard test of ownership is priority of use. To acquire ownership of a trademark it is not enough to have invented the mark first or even to have registered it first; the party claiming ownership must have been the first to actually use the mark in the sale of goods or services.” *Sengoku Works Ltd. v. RMC Int’l. Ltd.*, 96 F.3d 1217, 1219 (9th Cir. 1996).

9. When ownership of a trademark is contested, federal registration of the mark is mere *prima facie* evidence that the registrant owns the mark. Lanham Act § 7(b), 15 U.S.C. § 1057(b); Lanham Act § 33(a), 15 U.S.C. § 1115(a). A non-registrant can rebut this presumption establishing that the registrant did not have valid ownership rights at the time the mark was registered. *Sengoku Works Ltd.* at 1220. If a “non-registrant” shows that he used the mark in commerce first, then the registration can be invalidated. *Id.*

10. There is a well-established common law principle of “first-in-time, first-in-right” that favors actual and continuous use of a mark in commerce in establishing ownership rights. The first party who **uses** a mark can assert ownership rights when it has continuously used that mark in commerce. *See Ford Motor Co. v. Summit Motor Prod., Inc.*, 930 F.2d 277, 292 (3d Cir. 1991).

11. Because of the well-established, actual and continuous prior use of the Traditions mark for over thirty-six years in connection with the development and sale of firearms, muzzleloaders, and firearms accessories as described above, the Mark was in prior use before Registrant used it in commerce.

12. The Registrant cannot be its lawful owner because the Registrant was not the first individual or entity to use the Mark in commerce.

13. For the reasons set forth above, despite registering the Mark, Registrant is not legally entitled to the Registration or to the rebuttable presumptions that the Registration creates.

14. Any possible rebuttable presumptions created by registration of the Mark are overcome by Petitioner's exclusive use of the Mark and/or the word "Traditions" in commerce for over thirty years before the Mark was used and/or registered by Registrant.

15. The continued presence of the Registration on the federal trademark register constitutes an obstacle to Petitioner's rightful ownership and continued use of the term "Traditions" on its entire product line, as well as on its website and in marketing materials. The Registration, thus, is causing injury and damage to Petitioner.

WHEREFORE, Petitioner Traditional Sporting Goods, Inc. d/b/a Traditions Performance Firearms prays that the instant Petition to Cancel be granted and Registration No. 5,638,763 be canceled, as it is damaging to Petitioner.

COUNT II
THE TRADEMARK IS VOID AS THERE IS A LIKELIHOOD OF
CONFUSION WITH THE "TRADITIONS" BRAND NAME

16. Petitioner incorporates paragraphs 1-15 by reference.

17. 15 U.S.C. § 1052(d) prohibits registration of a mark that "[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or

trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.”

18. Because of the well-established, continuous prior use of the word “Traditions” in commerce in connection with the sale of firearms, muzzleloaders, and firearms accessories for over thirty-six years, the Mark was in prior use before Registrant used it in commerce.

19. Petitioner’s use of the term “Traditions” is prior to the date of filing of Registrant’s Application and the date of Registrant’s claimed date of first use.

20. As the Mark and the term “Traditions” are substantially similar, are in identical trade channels, and the goods offered for sale by the respective parties are substantially similar, Registrant’s Tradition Mark so resembles Petitioner’s common law Traditions Mark, previously and continuously used in the United States without abandonment, that it is likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting that Registrant’s goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Petitioner.

WHEREFORE, Petitioner Traditional Sporting Goods, Inc. d/b/a Traditions Performance Firearms prays that the instant Petition to Cancel be granted and Registration No. 5,638,763 be canceled, as it is damaging to Petitioner.

COUNT III
THE TRADEMARK IS VOID FOR PRIOR USE OF THE MARK

21. Petitioner incorporates paragraphs 1-20 by reference.

22. Because of the well-established, continuous prior use of the word “Traditions” in commerce in connection with the sale of firearms, muzzleloaders, and firearms accessories for over thirty-six years, the Mark was in prior use before Registrant used it in commerce.

23. In the alternative to the other counts, the Registrant cannot be its owner because the Registrant was not the first individual or entity to use the Mark in commerce.

24. The Registration creates a legal presumption that Registrant has valid and exclusive rights in the Mark for goods identified in the Registration.

25. For the reasons set forth above, Registrant is not entitled to the Registration or to the legal presumptions that the Registration creates.

WHEREFORE, Petitioner Traditional Sporting Goods, Inc. d/b/a Traditions Performance Firearms prays that the instant Petition to Cancel be granted and Registration No. 5,638,763 be canceled, as it is damaging to Petitioner.

The fee required by §2.6(a)(16) is enclosed herewith.

Dated: February 27, 2020

Respectfully submitted,

/s/ Danielle J. Reiss/
Danielle J. Reiss, Esq.
New Jersey Bar No. 034852011
Ryan L. Erdreich, Esq.
New Jersey Bar No. 020062007
Pisciotti Malsch, P.C.
30 Columbia Turnpike, Suite 205
Florham Park, NJ 07932
(973) 245-8100
dreiss@pmlawfirm.com
rerdreich@pmlawfirm.com

Attorneys for Petitioner
Traditional Sporting Goods, Inc. d/b/a
Traditions Performance Firearms

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the **Petition to Cancel** was mailed via First Class Mail, postage prepaid, to:

McMillan Group International, LLC
1638 W. Knudsen Drive
Phoenix, AZ 85027

With copy to:

Bennet K. Langlotz, Esq.
Langlotz Patent & Trademark Works, LLC
P.O. Box 660675 #37585
Dallas, TX 75266

/s/ Danielle J. Reiss
Danielle J. Reiss, Esq.
New Jersey Bar No. 034852011
Pisciotti Malsch, P.C.
30 Columbia Turnpike, Suite 205
Florham Park, NJ 07932
(973) 245-8100
dreiss@pmlegalfirm.com

Attorneys for Petitioner
Traditional Sporting Goods, Inc. d/b/a
Traditions Performance Firearms