



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET  
(TRADE MARKS AND DESIGNS)

Cancellation Division

C491A

Alicante, 17/12/2010

**REVOCATION PROCEEDINGS: NOTIFICATION OF A DECISION TO THE APPLICANT**

Address of the applicant / representative: CONTEGO IP LLP  
90 Long Acre  
Covent Garden  
London WC2E 9RZ  
REINO UNIDO

Reference: FABE01/0034  
Fax number: 00 44-2086860453

Community trade mark concerned: 003673274  
Fabergé

OHIM reference: **000004561 C**  
Language of the proceedings: English

Please see attached the decision terminating the revocation proceedings referred to above. It was delivered on 17/12/2010.

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Attached: 5 pages including cover page



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET  
(TRADE MARKS AND DESIGNS)

Cancellation Division

**DECISION  
of the Cancellation Division  
of 17/12/2010**

**IN THE PROCEEDINGS FOR A DECLARATION OF REVOCATION**

OHIM reference: **4561 C**

Community trade mark concerned: 3 673 274  
Fabergé

Language of the proceedings: English

**APPLICANT:** **Faberge Limited**  
Walker House, P.O. Box 908GT  
Mary Street  
George Town, Grand Cayman  
Caiman Islands

**REPRESENTATIVE:** **Contego Ip Llp**  
90 Long Acre  
Covent Garden  
London WC2E 9RZ  
United Kingdom

against

**COMMUNITY TRADE MARK PROPRIETOR:** **Jochen Dauer**  
Bessemmerstr. 50  
D-90411 Nürnberg  
Germany

**REPRESENTATIVE:** **Salleck + Partner**  
Hauptstr. 23  
D-91054 Erlangen  
Germany

## THE CANCELLATION DIVISION

composed of: Alexandra Apostolakis, Nadja Blondet and Stephan Hanne has taken the following decision on 17/12/2010:

1. **The rights of the proprietor of the CTM No 3 673 274 "FABERGÉ" are declared to be revoked as of 29/06/2010.**
2. **The Community trade mark proprietor shall bear the fee and costs of the applicant.**
3. **The amount of costs to be paid by the Community trade mark proprietor to the applicant shall be EUR 1150 corresponding to 450 EUR - representation costs - and 700 EUR - invalidity fee.**

### FACTS AND ARGUMENTS

(1) On 29/06/2010 the applicant filed a request for revocation against Community trade mark No 3 673 274 "FABERGÉ" (word mark), hereafter the "CTM".

(2) The CTM was filed on 19/02/2004 and registered on 28/06/2005 for the following goods:

Class 2: *lacquers, preservatives against rust.*

Class 3: *polishing preparations.*

Class 4: *industrial oils and greases; lubricants; fuels, in particular motor spirit.*

Class 7: *engine parts of all kinds, engine blocks, spark plugs for internal combustion engines, cylinder heads for engines, fittings.*

Class 9: *measuring apparatus for vehicles; crash helmets.*

Class 12: *vehicles for the transportation of passengers to and from airports and aircraft; land vehicles, internal combustion engines for land vehicles; bicycles, steering wheels for vehicles, gear sticks, vehicle seats, motor vehicle tyres, windscreen wipers, vehicle covers.*

Class 27: *mats of rubber for motor vehicles.*

(3) The grounds for the request are those of Article 51 (1)(a) CTMR i.e. that the trade mark has not been put to genuine use in the Community in connection with the goods or services registered for within a continuous period of five years.

(4) The applicant observes that to its knowledge the CTM has not been used in relation to any goods in the European Union.

(5) The applicant files its application for revocation in respect of all the goods for which the CTM is registered.

(6) On 04/08/2010 the CTM proprietor was notified of the application for revocation and a time limit of three months was given for submitting evidence of use.

(7) The CTM proprietor did not submit any reply to the request within the given deadline.

(8) On 14/12/2010, the Office informed the parties that it would take a decision on the matter.

## **GROUNDINGS FOR THE DECISION**

### *On the admissibility of the request*

(9) The request complies with the formalities prescribed in the CTMR and the CTMIR, in particular in Article 56(1) CTMR and Rule 37 CTMIR and is, therefore, admissible.

### *On the substance*

(10) Pursuant to Article 51(1)(a) CTMR the rights of the proprietor of the Community trade mark shall be declared revoked on application to the Office, if, within a continuous period of five years, the trade mark has not been put to genuine use in the Community in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use; however, no person may claim that the proprietor's rights in a Community trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application, genuine use of the trade mark has been started or resumed; the commencement or resumption of use within a period of three months preceding the filing of the application which began at the earliest on expiry of the continuous period of five years of non-use shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application may be filed;

(11) Pursuant to Article 55 (1) CTMR, the Community trade mark shall be deemed not to have had, as from the date of the application for revocation, the effects specified in this Regulation, to the extent that the rights of the proprietor have been revoked. An earlier date, on which one of the grounds for revocation occurred, may be fixed in the decision at the request of one of the parties.

(12) According to Rule 40(2) CTMIR, if the proprietor of the Community trade mark files no observations, the Office may decide on the revocation or invalidity on the basis of the evidence before it.

(13) The request for revocation was filed on 29/06/2010. The CTM was registered on 28/06/2005. Thus the CTM had been registered for more than five years at the date of the filing of the request.

(14) In revocation proceedings on the grounds of non-use the burden of proof lies with the CTM proprietor as the applicant can not be expected to prove a negative fact, namely that the mark has not been used during a continuous period of five years. It is thus the CTM proprietor who must prove actual and genuine use within the European Union, or present proper reasons for non use.

(15) The CTM proprietor did not submit any observations or evidence of use in reply to the application for revocation.

(16) In the absence of any reply from the CTM proprietor, there are no indications which support that the CTM registration No 3 673 274 "FABERGÉ" (word mark), has been put to genuine use in the European Union for any of the goods for which it is registered. Therefore and in accordance with Article 55(1) CTMR, the rights of the proprietor of CTM No 3 673 274 shall be revoked and deemed not to have had any effects as from the date of the application for revocation i.e. as of 29/06/2010.

## **COSTS**

(17) Pursuant to Article 85 (1) CTMR and Rule 94 IR, the party losing the cancellation proceedings shall bear the fees and costs of the other party. The CTM proprietor is the losing party and shall therefore bear the fee and costs. The amount of the costs to be paid by the CTM proprietor to the applicant shall be: 1150 EUR (450 EUR - representation costs - and 700 EUR - invalidity fee-).



## **THE CANCELLATION DIVISION**

**Alexandra Apostolakis**

**Nadja Blondet**

**Stephan Hanne**

### **Notice on the availability of an appeal:**

Under Article 59 CTMR any party adversely affected by this decision has a right to appeal against this decision. Under Article 60 CTMR notice of appeal must be filed in writing at the Office within two months from the date of notification of this decision and within four months from the same date a written statement of the grounds of appeal must be filed. The notice of appeal will be deemed to be filed only when the appeal fee of 800 EUR has been paid.

### **Notice on the review of the fixation of costs:**

The amount determined in the fixation of the costs may only be reviewed by a decision of the Cancellation Division on request. Under Rule 94 (4) IR such a request must be filed within one month from the date of notification of this fixation of costs and shall be deemed to be filed only when the review fee of 100 EUR (Article 2 point 30 of the Fees Regulation) has been paid.