

IN THE UNITED STATE PATENT AND TRADEMARK OFFICES
TRADEMARK OFFICE BEFORE THE TRADEMARK
TRIAL AND APPEAL BOARD

CR/PL, L.L.C.

Petitioner,

v.

Ronald B. Tosh

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CANCELLATION NO. 27,164
REGISTRATION NO. 1,732, 838
DATE OF ISSUE: NOVEMBER 17, 1992

BOX TTAB FEE
Assistant Commissioner For Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513



MOTION FOR RELIEF FROM FINAL JUDGMENT

Respondent, Ronald B. Tosh, located and doing business at 110 9th Ave. S., Edmonds, WA 98020, by and through his attorneys, the Law Offices of Greenberg & Lieberman, does hereby move to set aside the default entered as pertaining to the above Cancellation.

Statement of Facts

1. On January 1, 1988 Respondent began using the mark TUBS TO GO.
2. On October 1, 1993 Respondent moved his business to 110 9th Ave. S., Edmonds, WA 98020.
3. On or about the same time period the United States Post Office was also notified of the respondent's new address.
4. On December 12, 1993 respondent notified the United States Patent and Trademark office of his new address
5. On January 8, 1998 a Petition for Cancellation was filed against TUBS TO GO! Registration No. 1,732,838.
6. On January 23, 1998, TTAB attorney Katrina Peterson did attempt service on Respondent at 1816 Weaver Street, State College, PA 16803. Said service was returned undeliverable.
7. On June 25, 1998 Respondent filed a section 8 of the Trademark Act of 1946, as amended for Registration No. 1,732,838. (see trademark file wrapper 1,732,838 or attached Exhibit A)

8. In said section 8 Respondent stated his then current mailing address as 110 9th Ave. S., Edmonds, WA 98020 officially changing his mailing address. (see trademark file wrapper 1,732,838 or attached Exhibit B)
9. On July 14, 1998, TTAB attorney Katrina Peterson, without checking the file, did suspend the cancellation process and allow service to be attempted on Respondent by publication.
10. Respondent having no reason to check the Official Gazette did not respond to the cancellation.
11. On November 10, 1998 the United States Patent and Trademark Office sent an acknowledgment of receipt to the 110 9th Ave. S., Edmonds, WA 98020 address. (see trademark file wrapper 1,732,838 or attached Exhibit C)
12. On February 26, 1999 the Cancellation was granted. (see trademark file wrapper 1,732,838 or attached Exhibit D)
13. On July 20, 2001 Mr. Ronald Tosh first discovered that his mark had been canceled.
14. On July 20, 2001 the Law offices of Greenberg & Lieberman were hired to file the instant motion.

ARGUMENT

Section 2.18 Correspondence, with whom held states:

Correspondence will be sent to the applicant or a party to a proceeding at its address ...
Correspondence will continue to be sent to such address until the applicant or party, or the attorney at law or other authorized representative of the applicant or party, indicates in writing that correspondence is to be sent to another address. 41 FR 758, Jan. 5 1976, as amended at 54 FR 37588, Sept. 11, 1989

When the trademark office accepted and used Respondent's new address when acknowledging receipt of his section 8 filing it also accepted said address as the one for service of process for all TTAB actions. At the time when publication was affected through publication the TTAB did have a valid address, which, if it had been used would have provided the Respondent with notice of the cancellation. The TTAB's failure to check its own records before attempting service through publication demands that all things pertaining to this mark be placed in the same position they would have been had the Respondent been properly notified of the Cancellation.

WHEREFORE, respondent prays that:

1. the default judgment be set aside;
2. Respondent's attached answer to said cancellation be entered;

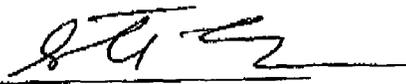
3.P etitioner's Trademark, LAUNDRY TUB TO-GO, No. 7,544,9428, which was allowed in light of the cancellation of Respondent's mark, be cancelled; and

4.P etitioner's application for TUB/SHOWER-TO-GO, No. 7,517,7441, not be allowed to move forward in light of Respondent's mark.

Respondent hereby appoints Greenberg & Lieberman, 314 Philadelphia Ave., Takoma Park, MD 20912, telephone 301-588-8393.

This MOTION FOR RELIEF FROM FINAL JUDGMENT is being submitted in triplicate. If any fees are due and owing on this petition, permission to debit deposit account 500356 is hereby given.

Respondent: Ronald B. Tosh

By: 

Stevan Lieberman
Attorney for Respondent

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RESPONSE TO PETITION FOR CANCELLATION
AND COUNTER PETITION FOR CANCELLATION

Respondent, Ronald B. Tosh, located and doing business at 110 9th Ave. S., Edmonds, WA 98020, by and through his attorneys, the Law Offices of Greenberg & Lieberman, does answer Respondent's petition.

Respondent denies that he has discontinued the use of the mark TUBS TO GO and Design, Registration No. 1,732,838. (Declaration of Ronald Tosh ("DRT")), 1-2. Respondent, since January 1, 1988, has continuously used the mark TUBS TO GO and plans to continue using said mark.

WHEREFORE, Respondent prays that Petitioner's Petition for Cancellation be denied.

COUNTER MOTION FOR CANCELLATION

Respondent counter petitions for the Petitioner's mark to be cancelled. As grounds for this Petition, it is alleged that Respondent is likely to be damaged by continuance of Registration No. 1,732,838.

Respondent hereby appoints Greenberg & Lieberman, 314 Philadelphia Ave., Takoma Park, MD 20912, telephone 301-588-8393.

This MOTION FOR RELIEF FROM FINAL JUDGMENT is being submitted in triplicate. If any fees are due and owing on this petition, permission to debit deposit account 500356 is hereby given.

Respondent: Ronald B. Tosh

By: 
Stevan Lieberman
Attorney for Respondent

09/27/2001 13:39 4253485009

TUBS TO GO AGUADOLLA

09-28-01 17:18 From-

T-828 P.01/01 F-407

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BOX ITAB FREE
Assistant Commissioner For Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

DECLARATION OF RONALD B. TOSH

I, Ronald B. Tosh, declare as follows:

1. I am over 18 years of age and am the owners of TUBS TO GO. I have personal knowledge of the facts set forth herein, and if called to testify, could and would testify competently thereto. As to matters stated on information and belief, I believe them to be true.

2. I have been using the mark TUBS TO GO continuously since January 1, 1988.

3. I notified the United States Patent and Trademark Office of our new address first on December 12, 1993.

4. A attached herein, as appendix A, is a true and correct copy of the letter which was sent at that

02-07-02 12:52 From-

T-288 P.10/11 F-452

09/27/2001 13:39 4253485089

TUBS TO GO AQUADOLLA

PAGE 03

09-28-01 17:18 From-

T-028 P.02/03 F-457

time.

5.I notified the United States Patent and Trademark Office of our new address for the second time on June 25, 1998 when we filed our section 8.

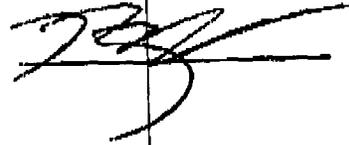
6.I discovered that my mark had been cancelled when I looked at my mark on the Internet on July 19, 2001.

7.I hired the Law offices of Greenberg & Lieberman to reinstate the mark and answer the cancellation on July 20, 2001.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct, and that this declaration was executed on September 18, 2001, at Edmonds, WA.

Ronald B. Tosh

Dated: September 26, 2001



09/27/2001 13:39 4253485009

TUBS TO GO AQUADOLA



***Adding a Splash
to America's Bash!***

December 12, 1993

Ronald B. Tosh
110 9th Ave. S.
Edmonds, WA 98020
(425)672-7816

Trademark Reg. No. 1,732,838 and No. 1,522,204
"TUBS TO GO!" &
"TUBS TO GO, MOBILE HOT TUB COMPANY"

US Department of Commerce
Patent and Trademark Office
Washington, D.C. 20231

To whom it may concern,

As the owner of the Trademark Registration Numbers 1,732,838 and 1,522,204, I am writing to notify you of my recent address change. Please make note in your records regarding my Trademark Registrations of my new address as stated above, effective immediately.

Your attention is appreciated.

Sincerely,

Ronald Tosh

TUBS TO GO! • 110 9th Ave. S. • Edmonds, WA 98020 • (425)672-7816

TELECOPY COVER SHEET

fax
301-588-3292

301-588-8393 - phone

If there is a problem with transmission or if all pages are not received, please call for retransmission.

TO: Lisa Wallace

FAX #: 703-872-9102

COMPANY:

FROM: Steven

DATE: 2/7/02

RE: Lieberman

Number of pages including this cover page: _____

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Comments: