

ESTTA Tracking number: **ESTTA163986**

Filing date: **09/20/2007**

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	Stones Throw Records, LLC		
Entity	Limited Liability Company	Citizenship	California
Address	2658 Griffith Park Blvd., Suite 504 Los Angeles, CA 90039 UNITED STATES		

Attorney information	Thomas P. Philbrick ALLMARK TRADEMARK 4041 Sugar Maple Drive, Suite A Danville, CA 94506 UNITED STATES tom@allmarktrademark.com Phone:(925)648-4839
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**Registration Subject to Cancellation**

Registration No	2624884	Registration date	09/24/2002
Registrant	Orta, Rodney L. 11401 Century Oaks Terrace Suite 300 Austin, TX 78758 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 041. First Use: 1997/12/01 First Use In Commerce: 1997/12/01 All goods and services in the class are cancelled, namely: Entertainment in the nature of performances by a live musical group
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Petitioner as Basis for Cancellation**

U.S. Registration No.	3278527	Application Date	10/06/2006
Registration Date	08/14/2007	Foreign Priority Date	NONE
Word Mark	STONES THROW		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1996/04/01 First Use In Commerce: 1996/04/01		

	Clothing, namely shirts, hats and sweatshirts		
U.S. Application No.	77178223	Application Date	05/10/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	STONES THROW		
Design Mark			
Description of Mark	The mark consists of The mark is a picture of a music record with the words "Stones Throw" over the record..		
Goods/Services	Class 041. First use: First Use: 1997/10/27 First Use In Commerce: 1997/10/27 Entertainment, namely presentation of live performances by musical bands and musical concerts		
U.S. Application No.	77122832	Application Date	03/06/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	STONES THROW RECORDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1997/10/27 First Use In Commerce: 1997/10/27 Entertainment, namely presentation of live performances by musical bands and musical concerts		
U.S. Application No.	77085283	Application Date	01/18/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	STONES THROW		
Design Mark			
Description of Mark	The mark consists of A circular record in the background with the name Stones Throw on top of the record..		
Goods/Services	Class 009. First use: First Use: 1996/04/01 First Use In Commerce: 1996/04/01 Musical sound recordings; Downloadable musical sound recordings; Musical video recordings Class 025. First use: First Use: 1996/04/01 First Use In Commerce: 1996/04/01 Clothing, namely shirts, hats and sweatshirts		
U.S. Application No.	77015178	Application Date	10/05/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	STONES THROW RECORDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1996/04/01 First Use In Commerce: 1996/04/01 Downloadable musical sound recordings; Musical sound recordings; Musical		

	video recordings
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Attachments	77015328#TMSN.jpeg ( 1 page )( bytes ) 77178223#TMSN.jpeg ( 1 page )( bytes ) 77122832#TMSN.jpeg ( 1 page )( bytes ) 77085283#TMSN.jpeg ( 1 page )( bytes ) 77015178#TMSN.jpeg ( 1 page )( bytes ) STONES THROW pdf cancellation 09202007.pdf ( 5 pages )(24400 bytes )
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Signature	/Thomas P. Philbrick/
Name	Thomas P. Philbrick
Date	09/20/2007

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

In the matter of Trademark Registration No. 2,624,884  
For the Trademark STONES THROW  
Registered on September 24, 2002

Stones Throw Records, LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. _____
	)	Registration No.: 2,624,884
Orta, Rodney L.	)	
	)	
Respondent.	)	
_____	)	

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

PETITION TO CANCEL

Stones Throw Records, LLC (“Petitioner”), a Limited Liability Company legally organized under the laws of California, having its principal place of business at 2658 Griffith Park Blvd., Suite 504, Los Angeles, CA 90039, believes that it will be damaged by the existence of the registration for the mark STONES THROW, Registration No. 2,624,884 issued on September 24, 2002 to Rodney L. Orta, an individual and citizen of the United States, (“Respondent”), and hereby petitions to cancel the same.

As grounds for its petition, Petitioner alleges that:

1. Respondent is listed as the current owner of record for the registered words mark STONES THROW which is registered in connection with “Entertainment in the nature of performances by a live musical group,” (in International Class 41). (U.S. Reg. No. 2,624,884)

2. Petitioner is the owner of U.S. Reg. No. 3,278,527 for the mark STONES THROW used in connection with “Clothing, namely shirts, hats and sweatshirts,” in International Class 25.

3. Petitioner is the owner of U.S. Serial number 77085283 for the mark STONES THROW (& design) used in connection with “Musical sound recordings; Downloadable musical sound recordings; Musical video recordings,” in International Class 9 and “Clothing, namely shirts, hats and sweatshirts,” in International Class 25.

4. Petitioner is the owner of U.S. Serial number 77015178 for the mark STONES THROW RECORDS used in connection with “Downloadable musical sound recordings; Musical sound recordings; Musical video recordings,” in International Class 9.

5. Petitioner is the owner of the in-use trademark application Serial # 77178223 for the mark STONES THROW (words & design) filed on May 10, 2007, used in connection with “Entertainment, namely presentation of live performances by musical bands and musical concerts,” in International Class 41. Petitioner is also the owner of the in-use trademark application serial number # 77122832 for the mark STONES THROW RECORDS (standard character mark) filed on March 6, 2007, used in connection with “Entertainment, namely presentation of live performances by musical bands and musical concerts,” in International Class 41. Petitioner has been using the aforementioned STONES THROW (& design) and STONES THROW RECORDS marks for the application numbers 77122832 and 77178223 in interstate commerce since at least as early as October 27, 1997, well before the claimed first usage dates of the Respondent. Petitioner's other pleaded applications and registrations identified in paragraphs 2 through 4 (reg. no. 3278527, serial number 77085283, and serial number 77015178) have first usage dates of at least as early as April 1, 1996 which are also well prior to

Respondent's pleaded first usage dates. As a result of the longstanding use and promotion of the marks, Petitioner has gained considerable fame and goodwill in connection with its STONES THROW derived marks.

6. On June 19, 2007, the PTO issued an office action to Petitioner with respect to its pending application serial numbers 77122832, 77178223, (and on February 26, 2007 for 77015178, and on March 6, 2007 for 77085283) refusing to register its STONES THROW derived marks in connection with goods and services in International Classes 9 and 41. In the office actions, the PTO stated as a basis for refusal that the STONES THROW derived marks "so resemble the mark in U.S. Registration No. 2,624,884 as to be likely to cause confusion, to cause mistake, or to deceive." Registration No. 2,624,884 (the "Registration") was issued to Respondent for the mark STONES THROW in connection with "Entertainment in the nature of performances by a live musical group," in International Class 41. Petitioner has standing to file this cancellation as its above identified pending applications will be refused registration by the USPTO should Respondent's mark not be cancelled.

7. Petitioner has used the mark STONES THROW (words mark and words/design mark) in interstate commerce since at least as early as October 27, 1997 for the services specified in serial numbers 77178223 and 77122832 and since at least as early as April 1, 1996 for serial numbers 77085283, 77015178 and reg. no. 3,278,527. Respondent's pleaded first use and first use in interstate commerce dates are December 1, 1997 for his STONES THROW registration. On information and belief, Petitioner alleges that its pleaded marks have priority of use over Respondent's Registration, on the basis of its substantial prior interstate use in commerce of its marks prior to Respondent's adoption of a confusingly similar mark.

8. Based on Petitioner's substantial interstate use of its marks in commerce, and

resulting goodwill, acquired before Respondent's pleaded first usage dates, Petitioner believes that it is being damaged by the registration of U.S. Reg. No. 2,624,884 as it creates a confusingly similar overall commercial impression under Section 2(d) of the Trademark Act and is used in connection with related if not identical services. Furthermore, the registration and use of the mark STONES THROW by Respondent is likely to cause confusion or mistake in the minds of the public and to lead the public and prospective purchasers to mistakenly believe that Respondent's services are those of Petitioner or are endorsed, sponsored or otherwise affiliated with Petitioner, all to the damage and injury of the purchasing public and to the damage and injury of Petitioner.

9. If Respondent's Registration is not cancelled, Respondent will own the *prima facie* exclusive right to use in commerce the "STONES THROW" mark on services that the Examining Attorney believes are related to the goods and services offered by Petitioner, in connection with its STONES THROW and STONES THROW RECORDS derived marks. The Registration is a source of damage and injury to Petitioner because it will likely prevent the Patent and Trademark Office from issuing a registration for its STONES THROW derived marks to Petitioner, despite its longstanding prior existing use of the marks in commerce.

10. Respondent's registration No. 2,624,884 for the mark STONES THOW should be cancelled based on a likelihood of confusion with Petitioner's prior rights in its above pleaded STONES THROW derived marks.

11. Wherefore, Petitioner prays that this Petition be sustained and that Registration No. 2,624,884 for the mark STONES THROW be cancelled in class 41.

12. The required fee of \$300 for this cancellation is submitted herewith.

13. Stones Throw Records (Petitioner) is represented by ALLMARK TRADEMARK, and Stones Throw Records requests that all correspondence be directed to its attorney, Thomas P. Philbrick, Esq. at the address given below.

Respectfully submitted,

Dated: \_\_\_\_\_09/20/2007\_\_\_\_\_

By: \_\_\_\_\_/Thomas P. Philbrick/\_\_\_\_\_

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