

ESTTA Tracking number: **ESTTA204312**

Filing date: **04/11/2008**

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	U.S. Department of the Interior, National Park Service, Hot Springs National Park		
Entity	Federal Government	Citizenship	Washington D.C.
Address	101 Reserve Street Hot Springs, AR 71902 UNITED STATES		
Attorney information	Sheryl L. Rakestraw 1849 C Street N.W. MS 7308 Room 7322 Washington, D.C., DC 20240 UNITED STATES sheryl.rakestraw@gmail.com Phone:202-208-4446		

Registration Subject to Cancellation

Registration No	2706344	Registration date	04/15/2003
Registrant	Hot Springs Advertising & Promotion Commission 134 Convention Blvd. P.O. Box 6000 Hot Springs National Park, AR 71902 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 1987/05/15 First Use In Commerce: 1987/05/15 All goods and services in the class are cancelled, namely: creating advertising for publications or direct mail advertising; cooperative advertising and marketing; displaying advertisements for others; and dissemination of advertising for others

Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)
<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)
The mark is primarily geographically descriptive	Trademark Act section 2(e)(2)
The mark is primarily geographically deceptively misdescriptive	Trademark Act section 2(e)(3)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	HOT SPRINGS NATIONAL PARK
Goods/Services	Recreational park services and facilities and related services

Attachments	HSNP.txt (3 pages)(8810 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	/Sheryl L. Rakestraw/
Name	Sheryl L. Rakestraw
Date	04/11/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
In the matter of Trademark Registration No. 2706344
For the mark Hot Springs National Park Arkansas
Date registered: April 15, 2003
U.S. Department of the Interior,
National Park Service
Hot Springs National Park
Petitioner

v.
Hot Springs Advertising & Promotion Commission
Registrant

Petition to Cancel

Petitioner is the U.S. Department of the Interior, National Park

Service Hot Springs National Park, (?Petitioner?), organized and existing under the Federal laws of the United States of America, located and doing business at 101 Reserve Street, Hot Springs, Arkansas 71901

To the best of Petitioner's knowledge, the name and address of the current owner of the registration is Hot Springs Advertising & Promotion Commission (?Registrant?), a corporation organized and existing under the laws of Arkansas, with a principal place of business at 134 Convention Blvd., P.O. Box 6000, Hot Springs, Arkansas 71902. The above identified Petitioner believes that it is and will be damaged by continued registration of Registration No. 2706344 for the mark HOT SPRINGS NATIONAL PARK ARKANSAS and hereby petitions to cancel same.

As grounds for its cancellation, Petitioner, alleges:

1. Petitioner is a United States Federal Agency located at 101 Reserve Street, Hot Springs, AR 71901.
2. Petitioner is the 18th National Park, a geographic area designated by Congress through 41 Stat 1407 on March 4, 1921 codified at 16 U.S.C. ?? 361 et seq.
3. Since March 4, 1921, Petitioner has been and is now using the name HOT SPRINGS NATIONAL PARK in connection with promotion and operation of services and facilities of HOT SPRINGS NATIONAL PARK pursuant to 41 Stat 1407. Said use has been valid and continuous since said date of first use and has not been abandoned. Said name HOT SPRINGS NATIONAL PARK of Petitioner is symbolic of extensive good will and consumer recognition built up by the Petitioner through legislation, as well as substantial amounts of time, effort, public relations, promotion and tax dollars.

Likelihood of Confusion

4. Petitioner has continuously used in commerce its name HOT SPRINGS NATIONAL PARK in connection with its congressionally mandated geographic location and services since 1921.
5. Upon information and belief, the mark identified in the Subject Registration as HOT SPRINGS NATIONAL PARK ARKANSAS so resembles Petitioner's name HOT SPRINGS NATIONAL PARK as to be likely to cause confusion, mistake, or deception. Consumers are likely to be confused, mistaken and deceived into believing that the goods and services of

Registrant are provided, sponsored, licensed, or approved by Petitioner by authority of Federal legislation and regulation, or believe that Petitioner and Registrant respective goods and services emanate from the same source; and/or that Petitioner is in some other fashion connected or associated with Registrant when it is not, thereby creating damage to Petitioner within the meaning of 10 USC ?1064.

6. Upon information and belief, the services that are identified in the Subject Registration HOT SPRINGS NATIONAL PARK ARKANSAS will be encountered by the same or similar class of consumers who are familiar with and interested in the services offered by Petitioner in connection with its name. Additionally, upon information and belief, the channels of trade for the respective services overlap.

7. Upon information and belief, Petitioner will be damaged by the continued registration of the Subject Registration because the Subject Registration would support and assist Registrant in the confusing, misleading, and/or deceptive use of Registrant?s alleged mark which is the subject of this Cancellation, and would give color of exclusive statutory rights to Registrant in violation and degradation of Petitioner?s prior rights and statutory and regulatory requirements. Therefore, continued registration of the Subject Registration of HOT SPRINGS NATIONAL PARK ARKANSAS is damaging to Petitioner?s common law mark and Congressional designation for its name HOT SPRINGS NATIONAL PARK.

8. Upon information and belief, for the foregoing reasons, the contemporaneous use and continued registration by Registrant of the Subject Registration is likely to cause consumer confusion, mistake and deception under 15 U.S.C. ? 1052(a) and 15 U.S.C. ? 1052(d), and 15 U.S.C. ? 1125(a).

Registration 2706344 Is Geographically Descriptive of the Origin of Registrant?s Goods and Services

9. Upon information and belief Registrant filed trademark to reflect the primary significance of HOT SPRINGS NATIONAL PARK, a geographic location placed under management of the United States Department of the Interior, National Park Service, by Congress.

10. Petitioner uses the name HOT SPRINGS NATIONAL PARK to denote a geographic area set aside by Congress on signage, brochures, concessions, and its website that promote the mission, goals, and mandates of the HOT SPRINGS NATIONAL PARK.

11. As a result of Congressional legislation and Petitioner?s long, continuous, and extensive use of the HOT SPRINGS NATIONAL PARK name, it has become famous in the mind of the public, and synonymous with the HOT SPRINGS NATIONAL PARK, the U.S. Department of the Interior National Park Service, and its mission, mandate and goals for protection of America?s lands and resources.

12. Upon information and belief, Registrant itself claims that they are located in Hot Springs National Park, Arkansas.

13. Upon information and belief, for the foregoing reasons, the contemporaneous use and continued registration by Registrant of the Subject Registration is geographically descriptive under 15 U.S.C. ? 1052 (e)(2).

Registration 2706344 is Primarily Geographically Deceptively Misdescriptive

14. Respondent?s registered mark, when used in connection with the services of respondent, is comprised of a name that is geographically

deceptively misdescriptive of the geographic origin of the services being provided.

15. Upon information and belief Registrant utilizes Subject Mark HOT SPRINGS NATIONAL PARK ARKANSAS to promote the belief that said goods and services associated with the mark are located or otherwise originate within HOT SPRINGS NATIONAL PARK, when in fact such are not located in HOT SPRINGS NATIONAL PARK or associated with the NATIONAL PARK SERVICE nor held to National Park Service management or operational regulations or otherwise.

16. Upon information and belief, for the foregoing reasons, the contemporaneous use and continued registration by Registrant of the Subject Registration is geographically deceptively misdescriptive under 15 U.S.C. ? 1052(e)(3).

Registration 2706344 Was Obtained Fraudulently

17. Upon information and belief Registrant filed trademark registration application with the USPTO to register the mark for use with ?advertising and promotion of services and facilities of Hot Springs National Park? in class 35 (U.S. Cl. 101) on September 4, 2001, and claiming its location was in ?Hot Springs National Park?. This application was assigned serial number 76308712.

18. In this application, Registrant declared under oath, being warned that willful false statements, and the like, may jeopardize the validity of the application, that the location of the business was in HOT SPRINGS NATIONAL PARK, and that the mark would be utilized to promote Hot Springs National Park?s services.

19. Upon information and belief, Registrant is not using the mark HOT SPRINGS NATIONAL PARK ARKANSAS in connection with the services identified in Ser. No. 76308712.

20. Upon information and belief, Registrant is not located in HOT SPRINGS NATIONAL PARK as identified in Ser. No. 76308712.

21. Upon information and belief, such declaration was made in bad faith and in an attempt to perpetrate a fraud on the PTO because Registrant knew or should have known that it was not using the mark ?HOT SPRINGS NATIONAL PARK ARKANSAS? in connection with federal services in application Ser. No 76308712 and that it was not and is not located within the boundaries of Hot Springs National Park, nor is there any city in the State of Arkansas with the official name of ?HOT SPRINGS NATIONAL PARK? as claimed in application Ser No. 76308712.

22. Reasonably relying on the truth of such materially false statements, the PTO approved application Ser. No. 76308712 for registration, resulting in Registration No. 2706344 issuing on April 15, 2003.

WHEREFORE, Petitioner respectfully requests that Registration Number 2706344 be cancelled, and that this Petition for Cancellation be sustained in favor of Petitioner.

Attorney Docket No.: NPS 3775