

ESTTA Tracking number: **ESTTA280176**

Filing date: **04/24/2009**

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	Nookie Parties LLC		
Entity	Limited Liability Company	Citizenship	New Jersey
Address	163 Kennedy Blvd Bellmawr, NJ 08301 UNITED STATES		

Attorney information	Robert R. Axenfeld Montgomery, McCracken, Walker & Rhoads, LLP 123 South Broad Street Philadelphia, PA 19109 UNITED STATES raxenfeld@mmwr.com, mschwarz@mmwr.com Phone:215-772-7691
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Registration Subject to Cancellation

Registration No	3609681	Registration date	04/21/2009
Registrant	Griggs, Christopher R 3945 W Cheyenne Avenue - #205 North Las Vegas, NV 89032 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2006/11/00 First Use In Commerce: 2008/06/00 All goods and services in the class are cancelled, namely: Wholesale distributorships featuring adult sexual aids

Grounds for Cancellation

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

U.S. Application No.	77690797	Application Date	03/13/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NOOKIE PARTIES		

Design Mark	<h1>Nookie Parties</h1>
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2007/04/00 First Use In Commerce: 2007/04/00 wholesale distributorships featuring adult-sexual aids Class 041. First use: First Use: 2007/04/00 First Use In Commerce: 2007/04/00 entertainment services, namely, conducting adult romance parties

Attachments	77690797#TMSN.jpeg (1 page)(bytes) PetitionforCancellation.pdf (5 pages)(29025 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 First Class Mail on this date.

Signature	/Robert R. Axenfeld/
Name	Robert R. Axenfeld
Date	04/24/2009

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

NOOKIE PARTIES LLC, a New Jersey company,)	
)	
)	
v.)	Cancellation No. _____
)	against Registration No. 3,609,681
)	
CHRISTOPHER R. GRIGGS, an individual.)	
)	
Respondent.)	
)	
)	

Petition for Cancellation

Honorable Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Petitioner, Nookie Parties LLC, believes that it is, and will continue to be damaged by Registration No. 3,609,681 for the mark NOOKIE PARTY, and hereby petitions this Board to order the cancellation of Registration No. 3,609,681. Petitioner presents the following grounds for cancellation:

I. Petitioner’s priority based upon use before Respondent’s constructive date of first use.

1. Upon information and belief, Respondent is the owner of U.S. Registration No. 3,609,681, registered in Class 35 for “wholesale distributorships featuring adult-sexual aids.”

2. Upon information and belief, Respondent has not used the mark on goods/services “in commerce” prior to June of 2008. Therefore, Respondent is not

entitled to a constructive date of first use earlier than the filing date of his intent-to-use application: November 21, 2007.

3. Petitioner, Nookie Parties LLC, is a New Jersey company organized and existing under the laws of the state of New Jersey.

4. Petitioner is the owner of U.S. application serial number 77/690,797 filed on March 13, 2009 for the mark NOOKIE PARTIES in Class 35 for “wholesale distributorships featuring adult-sexual aids,” and in Class 41 for “entertainment services, namely, conducting adult romance parties.”

5. Petitioner has been using, and continues to use in commerce, its distinctive common-law mark — NOOKIE PARTIES — since, at least, as early as April of 2007 in Classes 35 and 41.

6. Petitioner, therefore, has priority of use over Respondent, because Petitioner began to continuously use its mark in commerce as early as April of 2007, which was at least six months before Respondent filed his intent-to-use application on November 21, 2007. Additionally, Respondent did not purportedly “use” his mark in commerce until at least June of 2008, which is over a year after Petitioner began using its mark in commerce.

II. Respondent’s mark for NOOKIE PARTY is likely to cause confusion with Petitioner’s mark for NOOKIE PARTIES.

7. Petitioner’s and Respondent’s marks are nearly identical in sound, appearance and commercial impression, with both being for standard character form. Specifically, the dominant portion of both Petitioner’s and Respondent’s marks — NOOKIE — is identical. The only difference between Petitioner’s and Respondent’s marks is that Respondent uses the singular form of PARTY in combination with

NOOKIE, whereas Petitioner uses the plural form of PARTIES in combination with NOOKIE. Singular and plural forms of the same word are not a basis for distinguishing two marks. So, Petitioner's and Respondent's marks are nearly identical.

8. Both Petitioner and Respondent are involved in identical services, specifically "wholesale distributorships featuring adult-sexual aids" in Class 35.

9. In terms of trade channels, Petitioner advertises and sells services, in part, on the Internet at www.nookieparties.com, and through brochures, trade journals, and magazines.

10. Based on information and belief, Respondent owns the domain www.nookieparty.com.

11. Based on information and belief, there is a likelihood that Respondent's use of his mark requires the same or similar trade channels as Petitioner, specifically to advertise and sell services, which is likely to continue.

12. Purchasers of services from Petitioner and Respondent are likely to be confused with respect to the source of services, which involve the same class of services.

13. Based on the aforementioned paragraphs 7-13, the marks NOOKIE PARTY and NOOKIE PARTIES are likely to cause confusion inasmuch as the marks are substantially identical and the services are identical. This confusion will result in loss of sales to Petitioner, and irreparable damage to, and loss of, Petitioner's mark.

WHEREFORE Petitioner respectfully moves the Trademark Trial and Appeal Board to cancel the registration of the Respondent, specifically Registration No. 3,609,681.

This petition is filed electronically accompanied by payment of the filing fee. Should additional fees be necessary, please charge them to the deposit account of the undersigned, Acct. No. 50-2424.

Dated: April 24, 2009

Respectfully submitted,
Nookie Parties LLC

/Robert R. Axenfeld/

Robert R. Axenfeld, Registration No. 37,276
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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the foregoing **Petition for Cancellation** was served on Respondent, Christopher R. Griggs, at the following address of record, via first-class United States Postal Service mail, postage pre-paid:

Christopher R. Griggs, DBA Nookie Party
3945 W Cheyenne Avenue - #205
North Las Vegas, NEVADA 89032

this 24th day of April, 2009.

/Robert R. Axenfeld/
Attorney for Petitioner

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