

ESTTA Tracking number: **ESTTA293458**

Filing date: **07/03/2009**

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	Morris Publishing Group, LLC		
Entity	limited liability company	Citizenship	Georgia
Address	725 Broad Street Augusta, GA 30901 UNITED STATES		

Attorney information	Timothy E. Moses, Esq. Hull, Towill, Norman, Barrett & Salley, PC 801 Broad Street Suite 700 Augusta, GA 30901 UNITED STATES TEMoses@hullfirm.com Phone:7067224481		
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Registration Subject to Cancellation

Registration No	3054173	Registration date	01/31/2006
Registrant	Southern California Public Radio 1570 East Colorado Blvd Pasadena, CA 91106 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 2005/01/30 First Use In Commerce: 2005/01/30 All goods and services in the class are cancelled, namely: Entertainment services, namely, providing a series of radio programs featuring information and documentaries about artists, writers, musicians, filmmakers and performers
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition for Cancellation (DRIFT).pdf (4 pages)(61315 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	//TEMoses/2009-07-03//
Name	Timothy E. Moses, Esq.

Date	07/03/2009
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Morris Publishing Group, LLC		Cancellation No.:
<i>Petitioner,</i>		
		PETITION FOR CANCELLATION
v.		
		Registration No.: 3,054,173
Southern California Public Radio,		Registration Date: January 31, 2006
<i>Registrant.</i>		

Morris Publishing Group, LLC (“Petitioner”) believes that it will be damaged by the continued registration by Southern California Public Radio (“Registrant”) of the mark PACIFIC DRIFT (“Registrant’s Mark”) on the Principal Register in International Class 041 for use in connection with “entertainment services, namely, providing a series of radio programs featuring information and documentaries about artists, writers, musicians, filmmakers and performers” (“Registrant’s Services”) as listed in Registration No. 3,054,173 (the “Registration”), and hereby petitions to cancel the Registration. As grounds for its opposition, Petitioner alleges as follows:

I. Parties

1. Petitioner is a Georgia limited liability company, having its principal place of business at 725 Broad Street, Augusta, Georgia 30909.

2. On information and belief, Registrant is a non-profit corporation incorporated under the laws of Minnesota, having a principal place of business at 1570 East Colorado Blvd., Pasadena, California, 91106.

II. Petitioner’s Business

3. Petitioner was formed in 2001 and assumed the operations of its parent company, a privately held media company with diversified holdings that include newspaper and magazine publishing, outdoor advertising, radio broadcasting, book publishing and distribution, visitor publications and online services.

4. Petitioner is a publisher of newspapers, magazines and shopper publications.

5. Petitioner publishes more than sixty-five (65) publications across the United States.

III. Petitioner's Standing

6. Petitioner publishes a printed magazine under the title DRIFT.
7. Petitioner also makes this publication available in electronic form via the Internet at <http://www.surfthedrift.com>.
8. Petitioner has sought trademark registration of DRIFT in the United States Patent and Trademark Office, having submitted an application Serial No. 77/439,904 ("Petitioner's Application") on April 04, 2008.
9. Registration of Petitioner's Application has been refused due to the existence of Registrant's Mark.

IV. Registrant's Mark

10. The Registration resulted from an intent-to-use based application filed on December 22, 2004 (the "Filing Date") by Registrant.
11. On or about March 29, 2005, Registrant amended the application to allege that the mark was in use in interstate commerce.
12. The application was published for opposition on November 08, 2005 (the "Publication Date").
13. The Principal Register date for Registrant's Mark is January 31, 2006 (the "Registration Date").
14. Registrant claims that Registrant's Mark was first used in connection with Registrant's Services at least as early as January 30, 2005 ("Registrant's First Use Date").

V. Registrant's Use of Registrant's Mark

15. On information and belief, Registrant is the operator of three (3) radio stations in Southern California. (See <http://www.scpr.org/about/>, a copy of which is attached as **Exhibit 1**, and incorporated herein by reference.)
16. Registrant's Mark was the name of a radio program that explored issues specific to, and life in, Southern California. (See http://www.publicradio.org/applications/formbuilder/user/form_display.php?form_code=e85f38250916, a copy of which is attached as **Exhibit 2**, and incorporated herein by reference.)

17. The radio program using Registrant's Mark aired "from January 2005 to July 2006." (See copy of printout of <http://www.scp.org/programs/> dated December 19, 2008, a copy of which is attached as **Exhibit 3**, and incorporated herein by reference.)

VI. Registrant Has Abandoned Registrant's Mark

18. Registrant ceased airing radio programs using Registrant's Mark on July 2, 2006. (See **Exhibit 3**.)

19. Registrant no longer uses Registrant's Mark as the name of a radio program. (See list of Registrant's programs dated June 18, 2009, a copy of which is attached as **Exhibit 4**, and incorporated herein by reference; see also, Registrant's broadcast schedule dated June 18, 2009, a copy of which is attached as **Exhibit 5**, and incorporated herein by reference.)

20. Registrant no longer uses Registrant's Mark on its web site. (See <http://www.scp.org/programs/pacificdrift/> dated June 18, 2009, a copy of which is attached as **Exhibit 6**, and incorporated herein by reference.)

21. Registrant no longer offers podcasts of the radio program using Registrant's Mark. (See <http://www.scp.org/programs/pacificdrift/podcast.html>, a copy of which is attached as **Exhibit 7**, and incorporated herein by reference.)

22. Registrant no longer offers archives of the radio program using Registrant's Mark. (See <http://www.scp.org/programs/pacificdrift/archives.html>, a copy of which is attached as **Exhibit 8**, and incorporated herein by reference.)

23. Registrant's Mark no longer serves to identify the origin and quality of a radio program. As a result, the mark should be considered "abandoned." (See 3 Thomas McCarthy, MCCARTHY ON TRADEMARKS & UNFAIR COMPETITION §17:5 to §17:8 (4th ed. 2002).

24. Section 45 of the Lanham Act provides, in pertinent part, that a mark has been abandoned "[w]hen its use has been discontinued with intent not to resume such use." (15 U.S.C. § 1127).

25. Intent not to resume may be inferred from circumstances, and nonuse for three (3) consecutive years creates a *prima facie* case of abandonment. (15 U.S.C. § 1127).

26. As shown above, Registrant has failed to use Registrant's Mark for the past three consecutive years.

27. Continued registration of Registrant's Mark despite it appearing that Registrant has abandoned the mark would prevent Petitioner from registering the mark DRIFT as set forth in Petitioner's Application.

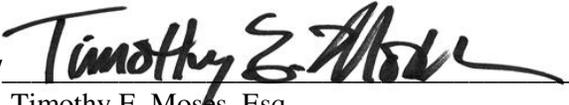
VII. Request for Relief

28. Wherefore, Petitioner requests that Registration No. 3,054,173 be canceled.

VIII. Fees

29. Petitioner has electronically submitted the required fee of \$300.00 simultaneously with filing this petition.

This 3rd day of July, 2009.

<p style="text-align: center;"><u>Certificate of Service</u></p> <p>I hereby certify that a copy of the foregoing Petition for Cancellation is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to (1) Linda M. Byrne, attorney of record, Crawford Maunu PLLC, 1270 Northland Drive, Suite 390, Saint Paul, MN 55120-1159, and (2) Southern California Public Radio, 1570 East Colorado Blvd, Pasadena, CA 91106, this <u>3rd</u> day of July, 2009.</p> <p>Signature: <u></u> Printed name: <u>Timothy E. Moses</u></p>	<p>/s/ <u></u> Timothy E. Moses, Esq. <i>Attorney for Petitioner</i> Member Georgia Bar (#526535) Hull, Towill, Norman, Barrett & Salley, PC 801 Broad Street, Suite 700 Augusta, GA 30901 (706) 722-4481 <i>tel</i> (706) 722-7194 <i>fax</i></p>
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