

ESTTA Tracking number: **ESTTA319206**

Filing date: **11/27/2009**

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	The Liberace Foundation		
Entity	Non-Profit Corporation	Citizenship	Nevada
Address	1775 East Tropicana Avenue Las Vegas, NV 89119 UNITED STATES		

Attorney information	Kelley L. Nyquist Brownstein Hyatt Farber Schreck 100 City Parkway, Suite 1600 Las Vegas, NV 89106 UNITED STATES lvpto@bhfs.com, knyquist@bhfs.com, jobermeyer@bhfs.com, elewis@bhfs.com Phone:702-464-7098		
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**Registration Subject to Cancellation**

Registration No	2907340	Registration date	11/30/2004
Registrant	COLLINS, BILL, MR. 382 EVENINGSIDE AVENUE HENDERSON, NV 890125490 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 041. First Use: 2004/01/01 First Use In Commerce: 2004/01/01 All goods and services in the class are cancelled, namely: Entertainment services, namely, live musical performances by a pianist
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**Grounds for Cancellation**

<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)

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MR. SHOWMANSHIP		
Goods/Services	entertainment service, namely, live musical performances by a pianist		

Attachments	BHFSDOCS-#1340430-v2-MR__SHOWMANSHIP_Cancellation.pdf ( 8 pages ) (29003 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	/Kelley L. Nyquist/
Name	Kelley L. Nyquist
Date	11/27/2009

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

In the Matter of Trademark Registration No. 2,907,340  
For the Trademark: MR. SHOWMANSHIP in International Class 41  
Registered on November 30, 2004

**THE LIBERACE FOUNDATION FOR THE  
PERFORMING AND CREATIVE ARTS,**

**PETITIONER,**

**V.**

**BILL COLLINS, D/B/A WILL COLLINS  
ENTERTAINMENT,**

**REGISTRANT.**

**CANCELLATION NO. \_\_\_\_\_**

**PETITION FOR CANCELLATION**

The Liberace Foundation for the Performing and Creative Arts (the “Liberace Foundation”), is a Nevada non-profit corporation having its principal place of business at 1775 East Tropicana Avenue, Las Vegas, NV, 89119. The Liberace Foundation believes it is, and will continue to be, damaged by the registration for the mark MR. SHOWMANSHIP (U.S. Registration No. 2,907,340), owned by Bill Collins, d/b/a Will Collins Entertainment, in International Class 41. Pursuant to 15 U.S.C. § 1064 et seq. and 37 C.F.R. § 2.111 et seq., the Liberace Foundation hereby petitions to cancel the registration for the mark MR. SHOWMANSHIP (U.S. Registration No. 2,907,340).

As grounds for the cancellation, the Liberace Foundation alleges the following:

**A. The Foundation and its Trademarks**

1. Salvatore Liberace (“Liberace”), an individual now deceased, was a world-

famous entertainer, known as MR. SHOWMANSHIP.

2. Liberace performed throughout the world as a classical pianist, television host, movie star, author and philanthropist from 1940 until his death in 1987.

3. Over the years, Liberace acquired an array of prestigious awards as an entertainer, including among others, two Emmy Awards, six gold albums, and two stars on the Hollywood Walk of Fame.

4. Liberace presented live musical performances as a pianist throughout his career, entertaining capacity crowds at Carnegie Hall, breaking attendance records at Madison Square Garden, and entertaining entire football stadiums of fans at the Hollywood Bowl and Chicago's Soldier Field.

5. Liberace is recognized in the Guinness Book of World Records as the world's highest paid musician and pianist.

6. Although colloquially known as MR. SHOWMANSHIP for most of his career, Liberace formally began using the MR. SHOWMANSHIP mark in connection with his live musical performances in Las Vegas, Nevada at least as early as 1964.

7. Liberace used the trademark MR. SHOWMANSHIP continuously in connection with live musical performances until his death in 1987.

8. Before his death, Liberace created the Liberace Foundation, a non-profit organization dedicated to assisting students pursue careers in the performing and creative arts through scholarships and artistic exposure.

9. Through a revocable trust, Liberace conveyed all his intellectual property assets, including his trademarks, services marks, copyrights, and rights of publicity, to the Liberace Foundation.

10. Accordingly, the Liberace Foundation is the successor in interest to all intellectual property assets belonging to Liberace, including the mark MR. SHOWMANSHIP for use in connection with a variety of goods and services, including entertainment services in the nature of live musical performances by a pianist.

11. As successor in interest to Liberace's intellectual property rights, the Liberace Foundation has continuously used the trademark MR. SHOWMANSHIP in connection with live musical performances by a pianist.

12. Because of Liberace and the Liberace Foundation's continuous use of, and significant investment in the MR. SHOWMANSHIP mark, the mark has become distinctive of the Liberace Foundation's services, has acquired significant goodwill in the United States, and is indelibly linked to Liberace and the Liberace Foundation.

**B. The MR. SHOWMANSHIP Trademark Registration**

13. On May 8, 2003, David Lomascola ("Lomascola") filed an intent-to-use trademark application with the United States Patent and Trademark Office ("USPTO") for the MR. SHOWMANSHIP mark (Serial No. 78-247,106) for "entertainment services, namely, live musical performances by a pianist," in International Class 41 (the "MR. SHOWMANSHIP Application").

14. On September 2, 2004, Lomascola submitted to the USPTO a Statement of Use for the MR. SHOWMANSHIP Application, claiming a first use date of January 1, 2004.

15. On November 11, 2004, the MR. SHOWMANSHIP Application matured into U.S. Registration No. 2,907,340 (the "MR. SHOWMANSHIP Registration"), which is the subject of this Petition to Cancel.

16. On December 6, 2006, the USPTO recorded an assignment of the MR.

SHOWMANSHIP Registration from Lomascola to Collins (Reel/Frame 3440/0873).

17. Upon information and belief, Collins is an individual residing at 383 Eveningside Avenue, Henderson, NV 89012.

18. Upon information and belief, Collins is using the MR. SHOWMANSHIP mark in connection with entertainment services, namely live musical performances by a pianist.

**C. Lomascola Committed Fraud on the USPTO**

19. Liberace Foundation hereby petitions to cancel the MR. SHOWMANSHIP Registration on the grounds of fraud on the USPTO.

20. On September 2, 2004, in support of the MR. SHOWMANSHIP Application, Lomascola submitted to the USPTO a sworn declaration in his Statement of Use, stating “Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.”

21. The Notice of Allowance lists the services of the MR. SHOWMANSHIP Application as covering, “entertainment services, namely, live musical performances by a pianist.”

22. As part of his Statement of Use for the MR. SHOWMANSHIP Application, Lomascola further stated, “The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.”

23. In support of its Statement of Use for MR. SHOWMANSHIP Application, Lomascola provided a specimen of use – a flyer advertising Lomascola’s musical performances.

24. At the time the Statement of Use was filed in support of MR. SHOWMANSHIP Application, Lomascola did not own the MR. SHOWMANSHIP mark.

25. When Lomascola declared in his Statement of Use to the USPTO that he was the owner of the MR. SHOWMANSHIP mark, such information was false.

26. Upon information and belief, at the time the Statement of Use was filed, Lomascola knew that he did not own the MR. SHOWMANSHIP mark.

27. Upon information and belief, Lomascola procured the registration for the MR. SHOWMANSHIP mark by false means and/or by knowingly and willfully making false and/or fraudulent declarations or representations to the USPTO.

28. Upon information and belief, Lomascola’s false statements were material because they were made with the intent to induce the USPTO to grant registration of the MR. SHOWMANSHIP mark.

29. Upon information and belief, the USPTO did, in fact, grant registration of the MR. SHOWMANSHIP mark to Lomascola by reasonably relying upon the truth of such false statements.

**D. The Liberace Foundation Has Priority Rights in MR. SHOWMANSHIP and a Likelihood of Confusion Exists Between the Marks**

30. Collins uses, and has acquired a registration for, the MR. SHOWMANSHIP mark that is identical to the Liberace Foundation’s MR. SHOWMANSHIP mark.

31. Collins uses, and has acquired a registration for, the MR. SHOWMANSHIP mark in connection with services that are competitive, complementary, and/or related to the services

offered by the Liberace Foundation under the MR. SHOWMANSHIP mark.

32. Collins uses, and has acquired a registration for, the MR. SHOWMANSHIP mark in connection with services that are marketed and sold in the same or similar channels of trade, and are purchased by the same or similar general classes of customers as the services offered by the Liberace Foundation under the MR. SHOWMANSHIP mark.

33. The Liberace Foundation's rights in the MR. SHOWMANSHIP mark date back to at least as early as 1964 and, upon information and belief, are approximately forty (40) years senior to Collins' rights in the MR. SHOWMANSHIP mark.

34. The MR. SHOWMANSHIP Mark, when applied to the goods and service set forth in the registration, is likely to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.

35. The MR. SHOWMANSHIP Mark consists of and comprises matter which falsely suggests a connection with the Liberace Foundation, and therefore, damages the Liberace Foundation.

36. The MR. SHOWMANSHIP Registration should be cancelled because the Liberace Foundation's trademark rights in the MR. SHOWMANSHIP mark are prior and senior to Collins' rights in the MR. SHOWMANSHIP mark, and a likelihood of confusion exists between the marks.

**E. Conclusion and Request for Relief**

37. Upon information and belief, the MR. SHOWMANSHIP Registration was procured by Lomascola through fraud on the USPTO.

38. The Liberace Foundation's trademark rights are prior and senior to Collins' rights in the MR. SHOWMANSHIP mark.

39. A likelihood of confusion exists between the Liberace Foundation and Collins' MR. SHOWMANSHIP marks.

WHEREFORE, the Liberace Foundation prays that Collins' USPTO registration (U.S. Reg. No. 3,331,356) for the mark, MR. SHOWMANSHIP, be cancelled, and that this cancellation be sustained in favor of the Liberace Foundation.

The United States Patent and Trademark Office is authorized to deduct the filing fee of three hundred dollars (\$300.00) and any other fees necessary in connection with the filing of this Cancellation from the deposit account of Brownstein Hyatt Farber Schreck, the Liberace Foundation's undersigned counsel, account number 504621.

Respectfully submitted,



Dated: November 25, 2009

By:

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Kelley L. Nyquist  
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Erin E. Lewis  
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**PROOF OF SERVICE**

Kelley Nyquist, an employee of Brownstein Hyatt Farber Schreck, LLP, says that on November 27, 2009, she served a copy of this PETITION FOR CANCELLATION upon the following individual by enclosing the same in a First Class postage paid envelope and depositing it in the U.S. mail:

**Registrant:**

Bill Collins, d/b/a Will Collins Entertainment  
383 Eveningside Avenue  
Henderson, NV 89012.

I declare that the statement above is true to the best of my information, knowledge and belief.



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Kelley L. Nyquist

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