

ESTTA Tracking number: **ESTTA347564**

Filing date: **05/14/2010**

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	SY Enterprises, LLC		
Entity	Limited liability company	Citizenship	California
Address	263 Blackstone Drive San Rafael, CA 94903 UNITED STATES		

Attorney information	Andrew H. Pontious Collette Erickson Farmer & O'Neill LLP 235 Pine Street Suite 1300 San Francisco, CA 94104 UNITED STATES apontious@collette.com Phone:415-788-4646
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**Registration Subject to Cancellation**

Registration No	3166765	Registration date	10/31/2006
Registrant	Vazquez, Francisco, Jr. 2868 Falling Tree Circle Orlando, FL 32837 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 043. First Use: 2005/11/01 First Use In Commerce: 2005/11/22 All goods and services in the class are cancelled, namely: Bar services; Catering of food and drinks; Cocktail lounges; Restaurant services; Restaurants; Serving food and drinks; Serving of food and drink/beverages; Sommelier services, namely, providing advice on wine and wine and food pairing
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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)
Abandonment	Trademark Act section 14

Attachments	Cancellation Petition Pearl Steakhouse 051410.pdf ( 6 pages )(257115 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	/s/AHP/
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Name	Andrew H. Pontious
Date	05/14/2010

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

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**In Re U.S. Trademark Registration No. 3,166,765**  
**Mark: PEARL STEAKHOUSE**  
**Issued: October 31, 2006**

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SY ENTERPRISES, LLC,

Petitioner,

Cancellation No. \_\_\_\_\_

vs.

FRANCISCO VAZQUES, JR.,

Registrant.

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**PETITION FOR CANCELLATION**

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In the matter of U.S. Trademark Registration No. 3,166,765 for the mark PEARL STEAKHOUSE for a variety of restaurant and bar related services in International Class 43, issued on October 31, 2006 to Francisco Vazquez, Jr., an individual ("Registrant"), SY Enterprises, LLC, a California limited liability company having its principal place of business at 263 Blackstone Drive, San Rafael, California 94903 ("Petitioner"), believes that it will be damaged by the continued registration of PEARL STEAKHOUSE and hereby petitions to cancel the same under the provisions of 15 U.S.C. §1064(3).

As grounds for cancellation, Petitioner asserts that:

1. Petitioner is the owner of certain trademarks, trade names, service marks, logos, packaging trade dress and associated intellectual property rights for use in operating restaurants, including the PEARL'S DELUXE BURGERS mark to which Petitioner owns all right, title and

interest in and to for use with, *inter alia*, "hamburger sandwiches" in International Class 30 and "restaurant services, including sit-down service of food and take-out restaurant services" in International Class 43, as set forth in Petitioner's trademark application filed with the U.S. Patent and Trademark Office, Serial No. 77/741926 filed on May 21, 2009 (the "Application").

2. Petitioner has continuously used the PEARL'S DELUXE BURGERS mark in interstate commerce in connection with such goods and services since at least as early as April 16, 2006.

3. On August 4, 2005, Registrant filed an application to register the mark PEARL STEAKHOUSE (as a special form mark) under Sections 1(a) and 1(b) of the Lanham Act, 15 U.S.C. §§ 1051(a) and (b).

4. Upon information and belief, Registrant intended to use the mark PEARL STEAKHOUSE in connection with a restaurant of the same name in located in Orlando, Florida (the "Restaurant").

5. On February 2, 2006, Registrant amended its application to delete the Section 1(a) filing basis and proceed only under Section 1(b).

6. On August 1, 2006, Registrant filed a Statement of Use in which it admitted that the Restaurant in which it offered its restaurant and bar related services under the mark PEARL STEAKHOUSE "opened the first week of July 2006."

7. Based on this application, Registrant obtained U.S. Registration No. 3,166,765 (the "Registration"), which issued on October 31, 2006 for "bar services; catering of food and drinks; cocktail lounges; restaurant services; restaurants; serving food and drinks; serving of

food and drink/beverages; sommelier services, namely, providing advice on wine and wine and food pairing" in Class 43 (the "Services").

8. Upon information and belief, Registration No. 3,166,765 for the mark PEARL STEAKHOUSE was last owned by Registrant, an individual whose address was listed as 2868 Falling Tree Circle, Orlando, Florida 32837.

**First Basis for Cancellation - Abandonment**

9. Upon information and belief, Registrant died on or about November 14, 2006.

10. Upon information and belief, the Restaurant closed in late 2006.

11. Upon information and belief, Registrant has discontinued the use of the mark PEARL STEAKHOUSE covered by the Registration.

12. Upon information and belief, Registrant intends not to resume any bona fide use of the mark PEARL STEAKHOUSE covered by the Registration in the ordinary course of trade.

13. Upon information and belief, Registrant has not used the mark PEARL STEAKHOUSE covered by the Registration for at least three (3) years, which is prima facie evidence of abandonment.

14. Upon information and belief, Registrant has abandoned the mark PEARL STEAKHOUSE covered by the Registration. Cancellation of the Registration is, therefore, appropriate under the provisions of 15 U.S.C. §1064(3).

15. On May 21, 2009, Petitioner filed its Application with the U.S. Patent and Trademark Office. On March 17, 2010, the Application was rejected on the grounds that the PEARL'S DELUXE BURGERS mark so resembles the mark PEARL STEAKHOUSE covered

by the Registration that it is likely to cause confusion, deception and/or mistake under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

16. The continued existence of the Registration creates a serious cloud on Petitioners' continued right to use and register its PEARL'S DELUXE BURGERS, mark as set forth in the Application, as a result of which Petitioner believes it is and will continued to be seriously damaged.

**Second Basis for Cancellation - Fraud**

17. On August 1, 2006, Registrant filed with the U.S. Patent and Trademark Office a Statement of Use which included a sworn declaration by Registrant.

18. Registrant swore that Registrant was, as of November 1, 2005, using the mark PEARL STEAKHOUSE in commerce in connection with the Services. Upon information and belief, such statements were false at the time that they were made in as much as the Restaurant in which such Services were first offered did not open until July 2006.

19. Upon information and belief, Registrant knew that its statements regarding use of the mark PEARL STEAKHOUSE were false at the time such statements were made.

20. Upon information and belief, the U.S. Patent and Trademark Office relied upon Registrant's material false statements in registering the mark PEARL STEAKHOUSE. Upon information and belief, the U.S. Patent and Trademark Office would not have allowed the Registration to issue absent Registrant's knowingly false statements.

**WHEREFORE**, Petitioner prays that U.S. Trademark Registration No. 3,166,765 for the mark PEARL STEAKHOUSE be cancelled.

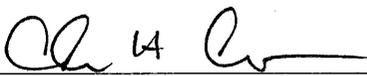
In Re Registration No. 3,166,765  
MARK - PEARL STEAKHOUSE

The filing fee for this petition in the amount of \$300.00 (covering International Class 43) is being transmitted electronically with this submission.

Dated this 14 day of May, 2010.

Respectfully submitted,

COLLETTE ERICKSON FARMER &  
O'NEILL LLP

By:  \_\_\_\_\_

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Attorneys for the Petitioner, SY Enterprises,  
LLC

**CERTIFICATE OF TRANSMISSION**

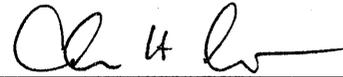
I hereby certify that this correspondence is being electronically transmitted to the Trademark Trials and Appeal Board via the U.S. Patent and Trademark Office's Electronic System for Trademark Trials and Appeals ("ESTTA") web link <http://estta.uspto.gov/> on May 14, 2010.

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Andrew H. Pontious

**CERTIFICATE OF SERVICE**

Pursuant to C.R.F. Section 2.111, I hereby certify that a true and correct copy of the foregoing **PETITION FOR CANCELLATION** was served on May 14, 2010, by mailing a copy thereof via overnight courier addressed to:

Francisco Vazquez, Jr.  
2868 Falling Tree Circle  
Orlando, Florida 32837



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Andrew H. Pontious