

ESTTA Tracking number: **ESTTA365829**

Filing date: **08/30/2010**

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	Tilted Kilt Franchise Ltd. Liability Company		
Entity	limited liability company	Citizenship	Wyoming
Address	664 W. Warner Road Tempe, AZ 85284 UNITED STATES		

Attorney information	Frank G. Long Greenberg Traurig, LLP 2375 E. Camelback Road, Suite 700 Phoenix, AZ 85016 UNITED STATES denipmail@gtlaw.com, longf@gtlaw.com, westp@gtlaw.com Phone:602-445-8000
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Registration Subject to Cancellation

Registration No	3215199	Registration date	03/06/2007
Registrant	Red Kilt Grill and Pub, LLC 9023 E. Paraiso Drive Scottsdale, AZ 85255 UNITED STATES		

Goods/Services Subject to Cancellation

Class 043. First Use: 2006/04/05 First Use In Commerce: 2006/04/05 All goods and services in the class are cancelled, namely: Restaurant and bar services
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Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2999841	Application Date	01/30/2004
Registration Date	09/27/2005	Foreign Priority Date	NONE
Word Mark	TILTED KILT		

Design Mark	Tilted Kilt
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2003/02/01 First Use In Commerce: 2003/03/17 Restaurant services

U.S. Registration No.	3488707	Application Date	05/16/2006
Registration Date	08/19/2008	Foreign Priority Date	NONE

Word Mark	TILTED KILT PUB & EATERY
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Design Mark	
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Description of Mark	The mark consists of a stylized depiction of a red haired Scottish woman dressed in tartan plaid clothing, a tray with drinks and an ellipse with a border in red, surrounding a gradation of yellow and gold. The ellipse also contains the words "Tilted Kilt Pub & Eatery".
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Goods/Services	Class 043. First use: First Use: 2003/03/15 First Use In Commerce: 2003/03/15 Restaurant and bar services
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U.S. Registration No.	3334851	Application Date	05/16/2006
Registration Date	11/13/2007	Foreign Priority Date	NONE

Word Mark	TILTED KILT PUB & EATERY
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Design Mark	Tilted Kilt Pub & Eatery
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Description of Mark	NONE
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Goods/Services	Class 043. First use: First Use: 2003/09/15 First Use In Commerce: 2003/09/15 Restaurant services
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Attachments	76573258#TMSN.gif (1 page)(bytes) 78884414#TMSN.jpeg (1 page)(bytes) 78884289#TMSN.jpeg (1 page)(bytes) Petition for Cancellation with Exhibits 1-3.pdf (11 pages)(421537 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	/Frank G. Long/
Name	Frank G. Long
Date	08/30/2010

on an application filed on January 30, 2004, and first use on February 10, 2003:

- TILTED KILT PUB & EATERY and design for “restaurant and bar services,” PTO Reg. No. 3,488,707, issued August 19, 2008, in Class 043, and based on an application filed on May 16, 2006 and first use on March 15, 2003; and
- TILTED KILT PUB & EATERY for “restaurant services,” PTO Reg. No. 3,334,851, issued November 13, 2007, in Class 043, and based on an application filed May 16, 2006 and first use in commerce on September 15, 2003.

3. A copy of the certificate for each of Petitioner’s Registered Marks is attached as Exhibits 1, 2 and 3.

4. Petitioner is now using the Petitioner’s Registered Marks in connection with the related services and has been doing so continuously since the date of first use.

5. Petitioner’s Registered Marks are symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion of Petitioner’s Registered Marks.

6. Petitioner’s value and subsisting registrations of Petitioner’s Registered Marks are prima facie evidence of Petitioner’s exclusive right to use the Marks in commerce for the services specified in the registrations.

Respondent’s Registered Mark

7. Red Kilt Grill and Pub LLC (hereinafter the Registrant) was issued U.S. Trademark Registration No. 3,215,199 on March 6, 2007, on the Principal Register for the RK

RED KILT GRILL & PUB mark for “restaurant and bar services,” in class 043, based on an application filed on December 20, 2005, and claiming first use on April 05, 2005. (“Registrant’s Mark”).

8. The address of Registrant, on record with the U.S. Patent and Trademark Office, is: 9023 East Paradise Drive, Scottsdale, Arizona 85255.

Confusion Claim

9. The claimed date of first use supporting Registrant’s Mark is a date later than the dates of first use of Petitioner’s Registered Marks.

10. The date of filing of the application supporting Registrant’s Mark is a date later than the date of filing of the application for Petitioner’s Registered Mark TILTED KILT for “restaurant services,” PTO Reg. No. 2,999,841.

11. Registrant’s Mark is similar to Petitioner’s Registered Marks.

12. The services related to Registrant’s Mark are identical to those related to Petitioner’s Registered Marks.

13. Registrant’s Mark and its related services so resemble Petitioner’s Registered Marks, previously used in the United States, and not abandoned, for the identical services as to be likely to cause confusion, or to cause mistake or to deceive, in violation of Section 2(d) of the Lanham Act.

Abandonment Claim

14. Registrant has discontinued use of Registrant’s Mark for a period of over three years with no intent to resume said use.

15. Registrant's non-use of Registrant's Mark for over three consecutive years is prima facie abandonment of Registrant's Mark under Section 45 of the Lanham Act.

16. Petitioner is damaged by continuance of the registration of Registrant's Mark in that Petitioner, since 2003, has continuously used Petitioner's Registered Marks for restaurant services, and Petitioner's continued and legal use of said marks will be impaired by the continued registration of the abandoned Registrant's Mark.

WHEREFORE, Petitioner prays that Registration No. 3,215,199 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

The Director is hereby authorized to charge the \$300.00 fee to Deposit Account No. 502638. If there are any additional fees due, the Director is authorized to charge such additional fees to Deposit Account No. 502775.

DATED: August 30, 2010

GREENBERG TRAURIG, LLP

By: /Frank G. Long/
Frank G. Long
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that, on August 30, 2010, a true and correct copy of the PETITION FOR CANCELLATION was served by placing same in the U.S. Mail, first class postage prepaid, to be delivered to the addressee as indicated below:

Red Kilt Grill and Pub
9023 E. Paraiso Drive
Scottsdale, AZ 85255

s/Peggy West/
Peggy West

EXHIBIT 1

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,999,841

Registered Sep. 27, 2005

SERVICE MARK
PRINCIPAL REGISTER

Tilted Kilt

LET'S EAT, INC. (NEVADA CORPORATION)
3700 W. FLAMINGO
LAS VEGAS, NV 89103

FIRST USE 2-1-2003; IN COMMERCE 3-17-2003.

SER. NO. 76-573,258, FILED 1-30-2004.

FOR: RESTAURANT SERVICES, IN CLASS 43
(U.S. CLS. 100 AND 101).

TRACY CROSS, EXAMINING ATTORNEY

EXHIBIT 2

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

Reg. No. 3,488,707

United States Patent and Trademark Office

Registered Aug. 19, 2008

Corrected

OG Date Aug. 17, 2010

**SERVICE MARK
PRINCIPAL REGISTER**



TILTED KILT FRANCHISE LTD. LIABILITY COMPANY (WYOMING LIMITED LIABILITY COMPANY)
664 W. WARNER ROAD
TEMPE, AZ 85284

OWNER OF U.S. REG. NO. 2,999,841.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PUB & EATERY", APART FROM THE MARK AS SHOWN.

THE COLOR(S) RED, GOLD, FLESH, BROWN, BLACK, AND WHITE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE COLOR RED APPEARS IN THE BORDER OF THE DRAWING, THE WOMAN'S HAIR, THE WOMAN'S CLOTHING, AND THE WORDING IN THE MARK; THE COLOR GOLD APPEARS IN THE BACKGROUND, AND IN THE COLOR OF THE BEER, THE COLOR FLESH APPEARS ON THE WOMAN,

THE COLOR BROWN APPEARS ON THE BEER AND ON THE TRAY, THE COLOR BLACK APPEARS ON THE WOMAN'S BELT, SHOES, AND SPORRAN, AND THE COLOR WHITE APPEARS ON THE WOMAN'S SOCKS AND SHIRT.

THE MARK CONSISTS OF A STYLIZED DEPICTION OF A RED HAired SCOTTISH WOMAN DRESSED IN TARTAN PLAID CLOTHING, A TRAY WITH DRINKS AND AN ELLIPSE WITH A BORDER IN RED, SURROUNDING A GRADATION OF YELLOW AND GOLD. THE ELLIPSE ALSO CONTAINS THE WORDS "TILTED KILT PUB & EATERY".

FOR: RESTAURANT AND BAR SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 3-15-2003; IN COMMERCE 3-15-2003.

SER. NO. 78-884,414, FILED 5-16-2006.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Aug. 17, 2010.*

EXHIBIT 3

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office
Corrected

Reg. No. 3,334,851

Registered Nov. 13, 2007

OG Date Aug. 17, 2010

**SERVICE MARK
PRINCIPAL REGISTER**

Tilted Kilt Pub & Eatery

TILTED KILT FRANCHISE LTD. LIABILITY COMPANY (WYOMING LIMITED LIABILITY COMPANY)
664 W. WARNER ROAD
TEMPE, AZ 85284

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.
OWNER OF U.S. REG. NO. 2,999,841.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PUB & EATERY", APART FROM THE MARK AS SHOWN.

FOR: RESTAURANT SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).
FIRST USE 9-15-2003; IN COMMERCE 9-15-2003.

SER. NO. 78-884,289, FILED 5-16-2006.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Aug. 17, 2010.*