

ESTTA Tracking number: **ESTTA366761**

Filing date: **09/03/2010**

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	Three Dog Bakery, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1843 North Topping Avenue Kansas City, MO 64120 UNITED STATES		

Attorney information	Thomas H. Van Hoozer Hovey Williams LLP 10801 Mastin Boulevard, Suite 1000, 84 Corporate Woods OVERLAND PARK, KS 66210 UNITED STATES tmdocketing.vanhoozer@hoveywilliams.com, litigation@hoveywilliams.com Phone:(913) 647-9050
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Registration Subject to Cancellation

Registration No	2991559	Registration date	09/06/2005
Registrant	WHITE CAP, INC. 35-B GREEN STREET HACKENSACK, NJ 07601 UNITED STATES		

Goods/Services Subject to Cancellation

Class 031. First Use: 2005/01/10 First Use In Commerce: 2005/01/10 All goods and services in the class are cancelled, namely: Pet candy
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Grounds for Cancellation

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

U.S. Application No.	77899139	Application Date	12/22/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	"WOOF"ERS		

Design Mark	
Description of Mark	The mark consists of the word "WOOF"ERS in white in stylized form outlined in black, purple and orange.
Goods/Services	Class 031. First use: First Use: 2008/09/00 First Use In Commerce: 2008/09/00 animal foodstuffs

U.S. Application No.	77899491	Application Date	12/22/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	"WOOF"ERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 2008/09/00 First Use In Commerce: 2008/09/00 animal foodstuffs		

Attachments	77899139#TMSN.jpeg (1 page)(bytes) 77899491#TMSN.jpeg (1 page)(bytes) Petition for Cancellation.pdf (5 pages)(224839 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	/Thomas H. Van Hoozer/
Name	Thomas H. Van Hoozer
Date	09/03/2010

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

In the Matter of)	
U.S. Registration No. 2991559)	
)	
THREE DOG BAKERY, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
WHITE CAP, INC.)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Three Dog Bakery, Inc. (“Petitioner” or “Three Dog”), a Delaware corporation having its principal place of business at 1843 North Topping Avenue, Kansas City, Missouri 64120, believes that it will be damaged by the continued registration of U.S. Registration No. 2991559 and petitions for cancellation of the Registration under § 14 of the Trademark Act of 1946, 15 U.S.C. § 1064.

1. For over twenty years, Petitioner, and its predecessor-in-interest, have been in the business of, *inter alia*, making and selling a wide variety of pet foods, treats and snacks (“Petitioner’s Goods”) through its own retail outlets and through third-party retail outlets.
2. Petitioner first adopted and used its WOOFERS trademark on and in connection with dog treats at least as early as January 2003 in interstate commerce.

3. Petitioner owns the following trademark applications currently pending in the United States Patent & Trademark Office (“PTO”):

Mark	Serial Number	Filing Date	Goods Identification
	77/899,139	December 22, 2009	Animal foodstuffs
WOOFERS	77/899,491	December 22, 2009	Animal food stuffs

Petitioner’s pending applications are collectively referred to herein as the “Applications.”

4. Since Petitioner’s first adoption and use of its WOOFERS trademark in at least as early as January 2003, Petitioner, through its predecessor-in-interest, has continuously used WOOFERS or “WOOF”ERS (collectively “Petitioner’s Mark”) in substantially the same form, creating the same commercial impression, and in connection with dog treats.
5. On March 18, 2010, the PTO issued Office Actions for Petitioner’s Applications, refusing registration under Section 2(d) based on U.S. Registration No. 2991559 for WOOFERS for “pet candy” (“Registration”).

Count I:

LIKELIHOOD OF CONFUSION

6. Petition repeats and realleges Paragraphs 1-5 as though fully stated here.
7. There is a likelihood of confusion between the registered WOOFERS mark as set forth in the Registration and Petitioner's Mark.
8. Petitioner's Applications as recited above have been initially refused registration based on the Examining Attorney's assertion of likelihood of confusion with the Registration.
9. Petitioner's date of first use of its WOOFERS in connection with pet treats is long prior to the date of first use of January 10, 2005, as set forth in the registration. As such, Petitioner enjoys priority use as between Petitioner's Mark and the mark set forth in the Registration. As such, Petitioner enjoys priority of use between Petitioner's Mark and that set forth in the Registration.
10. Petitioner is being damaged by its inability to register Petitioner's Mark based on the asserted likelihood of confusion with the Registration.
11. Should the Registration for Petitioner's Mark not be cancelled, Petitioner will not be able to obtain the benefits of Federal Registration to which it is entitled, and Respondent will maintain its Registration which may be used to curtail Petitioner's rights to use Petitioner's Mark.

WHEREFORE, Petitioner Three Dog Bakery, Inc. believes and alleges that it is and will be damaged by the continued registration of WOOFERS, U.S. Registration No. 2991559, and therefore prays that:

- a) the Petition for Cancellation by granted in favor of Petitioner; and
- b) U.S. Registration No. 2991559 be cancelled.

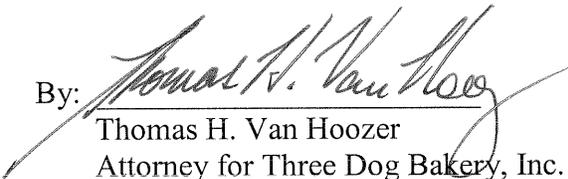
Three Dog Bakery, Inc. hereby appoints Thomas H. Van Hoozer and Hovey Williams LLP, 10801 Mastin Boulevard, Suite 1000, Overland Park, Kansas 66210, as its representative upon whom notices and process in this cancellation proceeding may be served.

Respectfully submitted,

Three Dog Bakery, Inc.

Dated: September 3, 2010

By:


Thomas H. Van Hoozer
Attorney for Three Dog Bakery, Inc.
HOVEY WILLIAMS LLP
10801 Mastin Boulevard
Suite 1000
Corporate Woods, Building 84
Sears Tower
Overland Park, Kansas 66201
Tel. No. 913-647-9050
Fax. No. 913-647-9057

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition for Cancellation was served on September 3, 2010, via first-class mail, postage prepaid, addressed to:

White Cap, Inc.
35-B Green Street
Hackensack, New Jersey 07601

By /Thomas H. Van Hoozer/
Thomas H. Van Hoozer
Attorney for Petitioner