

ESTTA Tracking number: **ESTTA384783**

Filing date: **12/20/2010**

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	Christian M. Ziebarth		
Entity	Individual	Citizenship	UNITED STATES
Address	183 Alicante Aisle Irvine, CA 92614 UNITED STATES		

Attorney information	Susan M. Natland Knobbe, Martens, Olson & Bear, LLP 2040 Main Street 14th Floor Irvine, CA 92614 UNITED STATES efiling@kmob.com Phone:949-760-0404		
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Registration Subject to Cancellation

Registration No	1043729	Registration date	07/13/1976
Registrant	DEL TACO, LLC 25521 COMMERCENTRE DRIVE LAKE FOREST, CA 92630 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 1970/12/19 First Use In Commerce: 1970/12/19 All goods and services in the class are cancelled, namely: RESTAURANT SERVICES
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	2010-12-20 Petition for Cancellation - CZIEB.001CN.pdf (7 pages)(476885 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	/smn/
Name	Susan M. Natland
Date	12/20/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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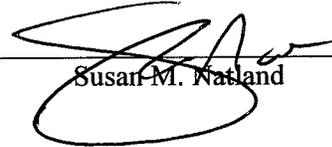
Christian M. Ziebarth,
Petitioner,
v.
Del Taco, LLC,
Respondent.

Cancellation No: _____

I hereby certify that this correspondence and all marked attachments are being electronically filed with the Trademark Trial and Appeal Board through their web site located at <http://estta.uspto.gov> on

December 20, 2010

(Date)



Susan M. Natland

PETITION FOR CANCELLATION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

Pursuant to 15 U.S.C. §§ 1064, 1068, 37 C.F.R. § 2.111(b) and TBMP § 309.03(d), Petitioner, Christian M. Ziebarth, located and doing business at 183 Alicante Aisle, Irvine, CA 92614 (hereinafter referred to as "Petitioner") believes that he is and will be damaged by Registration No. 1,043,729 for the mark NAUGLES, currently owned by Del Taco, LLC, a limited liability company having a place of business at 25521 Commercecentre Drive, Lake Forest, CA 92630 (hereinafter referred to as "Respondent"), and hereby petitions to cancel said registration. Trademark Registration No. 1,043,729 ("Respondent's Registration") is described as follows:

Mark: NAUGLES
Goods: Restaurant Services in International Class 35
Filed: July 11, 1975
Alleged First Use: December 19, 1970
Registered: July 13, 1976

As grounds for cancellation, it is alleged that:

1. Petitioner is the owner of U.S. Trademark Application Serial No. 85/040,746 filed on May 17, 2010 for the mark NAUGLES in connection with “cafeteria and restaurant services” (“Petitioner’s Application”) in International Class 43.

2. Petitioner has been, and continues to be, damaged in that Trademark Registration No. 1,043,729 has been cited against Petitioner’s Application as a basis for refusal of registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

3. Respondent’s Registration was initially issued on July 13, 1976 to Naugles Inc., a California Corporation. According to the USPTO Assignment records, since registration of Respondent’s Registration on July 13, 1976, a number of purported name changes and assignments have occurred with respect to such registration. The USPTO Assignment records reflect Respondent as the current owner of Respondent’s Registration. References to Respondent in this Petition may refer to Respondent’s predecessors-in-interest, as the case may be.

4. Upon information and belief, Respondent has abandoned the NAUGLES mark shown in Respondent’s Registration pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3).

5. Upon information and belief, Respondent is not currently using the NAUGLES mark as shown in Respondent’s Registration in connection with “restaurant services.”

6. Upon information and belief, Respondent discontinued use of the NAUGLES mark as shown in Respondent’s Registration in connection with “restaurant services” many years ago.

7. Upon information and belief, for at least the last three consecutive years, Respondent has not used the NAUGLES mark as shown in Respondent’s Registration in connection with “restaurant services,” thereby constituting prima facie evidence of abandonment of the NAUGLES mark as shown in Respondent’s Registration.

8. Although Respondent filed Sections 8 & 9 Affidavits to renew Respondent’s Registration on May 18, 2006 (“2006 Renewal”), upon information and belief, Respondent had, at the time of the 2006 Renewal, previously discontinued and abandoned use of the NAUGLES mark as shown in Respondent’s Registration in connection with “restaurant services.” The specimen submitted to support such Renewal was a website printout that does not demonstrate bona fide use of the NAUGLES mark in connection with “restaurant services.” The website merely discusses the *prior* history of the Naugles restaurants and nothing more. (See Exhibit 1). In addition, upon information and belief, “restaurant services” were not being provided by Respondent under the NAUGLES mark as shown in Respondent’s Registration at the time of the 2006 Renewal.

9. In addition, although Respondent filed sections 8 & 9 Affidavits to renew Respondent’s Registration on July 8, 1996 (“1996 Renewal”), upon information and belief, Respondent had at the time

of the 1996 Renewal, previously discontinued and abandoned use of the NAUGLES mark as shown in Respondent's Registration in connection with "restaurant services." In addition, upon information and belief, "restaurant services" were not being provided by Respondent under the NAUGLES mark as shown in Respondent's Registration at the time of the 1996 Renewal.

10. In view of Respondent's non-use and abandonment of the NAUGLES mark shown in U.S. Registration No. 1,043,729, Respondent is not entitled to continued registration of the mark pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3), and, as such, Respondent's Registration should be cancelled.

11. As Petitioner's attempt to register the mark as shown in Petitioner's Application will be impaired by the continued registration of said abandoned mark of Respondent, and as Petitioner believes that Respondent has abandoned the mark shown in U.S. Registration No. 1,043,729, said registration should be canceled.

Petitioner reserves the right to amend this Petition to allege other claims in the event discovery of other information indicates they are appropriate.

WHEREFORE, Petitioner prays that U.S. Registration No. 1,043,729 be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

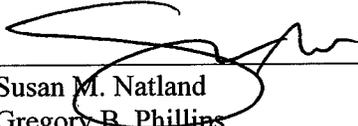
Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 20, 2010

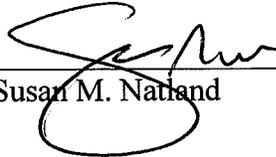
By: _____


Susan M. Natland
Gregory B. Phillips
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Petitioner,
Christian M. Ziebarth

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **Petition for Cancellation** upon Respondent by depositing one copy thereof in the United States Mail, first-class postage prepaid, on December 20, 2010, addressed as follows:

Del Taco, LLC
25521 Commercecentre Drive
Lake Forest, CA 92630



Susan M. Nathand

10194731
122010

EXHIBIT 1



The first Del Taco opened in 1964 in Barstow, California with a concept that caught on quickly -- freshly prepared, made to order Mexican/American food, fast service and value. In more than 36 years, Del Taco has grown to become a major player in the Mexican-style quick-service category. With over 400 restaurants across the country, Del Taco is the second largest Mexican/American chain in the United States.

Building the Concept

The success of the first restaurant, in 1964, quickly led to expansion. Months after the first, a second restaurant opened in Corona, California with a significant addition -- a drive-thru window which was to become an enduring feature of the Del Taco chain. Two years later, Red-E-Foods Systems, Inc. was formed and Del Taco became a hot Southern California franchise. In 1972, a modernized, 28-seat restaurant opened in Newport Beach, the largest Del Taco at that time. This updated Del Taco was the epitome of the modern, efficient fast-food outlet and became the design prototype for Del Taco restaurants to come.

In 1973 Red-E-Foods Systems, Inc. officially changed its name to Del Taco, Inc. and it also marked the first year that Del Taco opened units at an average rate of one per month.

Three years after changing the name to Del Taco, Inc. founders Ed Hackbarth and David Jameson sold their stock to an independently held firm. The new management team set their sights on further expansion throughout Southern California. The 50th Del Taco restaurant opened in February, 1977 with the 100th restaurant opening just 19 months later.

Naugles, another quality Mexican fast-food chain, was established in 1970 and quickly gained in popularity. In 1971, Harold Butler bought the three Naugles restaurants and began rapid expansion, growing the chain to 225 restaurants. In December 1985, Butler sold Naugles to Collins Food International.

In March 1988, Del Taco and Naugles, two of the most successful Mexican fast-food restaurant chains, combined to become one of the strongest competitors in

the then \$60 billion fast-food industry.



Strengthening the Concept

In 1990, Kevin K. Moriarty joined the company as Chief Executive Officer and it proved to be a watershed year for Del Taco. In the ensuing years, the chain redoubled its efforts to ensure customer value and operator opportunity. CEO Kevin K. Moriarty and his management team became owners of the company and took the necessary measures to ensure their concept continued its growth momentum. They launched an aggressive program of brand marketing and promotions; improved operating efficiencies for better and faster customer service; re-acquired out-of-state trademark rights to the Del Taco name; reorganized and strengthened the company's balance sheet.

Particularly significant to the chain was the unveiling of Del Taco's new Concept 2000 restaurant design. The Concept 2000 design provided a unique, fun, festive, experience at a fast-food value that the whole family could enjoy.

The Road to Expansion

In an industry pervasive with speed, Del Taco has successfully positioned itself for accelerated expansion nationwide. Spreading its advantageous concept and growth momentum across the nation, Del Taco recently has signed 50+ development agreements that will increase the Del Taco chain by an additional 300+ franchised restaurants over the next few years. These new agreements represent the largest franchise growth in the history of the company and will expand Del Taco's presence to over 14 states.

The Lake Forest, CA - based chain offers menu items that appeal to a broad range of tastes with a strong emphasis on quality and value. The menu includes tacos, burritos, quesadillas, nachos, world famous crinkle cut fries, Double Del Cheeseburgers, shakes and breakfast burritos with new tastes introduced regularly. Each item is made to order only when the customer orders it with many quality ingredients including lard-free beans made from scratch daily, real cheddar cheese grated on site, chicken grilled fresh every hour, and fresh produce. Del Taco, Inc. is a privately held company.