

ESTTA Tracking number: **ESTTA404118**

Filing date: **04/18/2011**

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	Pixability, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	One Broadway, 14th Floor Cambridge, MA 02142 UNITED STATES		

Attorney information	Aaron Y. Silverstein Saunders & Silverstein LLP 14 Cedar Street, Suite 224 Amesbury, MA 01913-1831 UNITED STATES asilverstein@massiplaw.com,trademarks@massiplaw.com,ktoms@massiplaw.com Phone:9784639130		
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Registration Subject to Cancellation

Registration No	3789569	Registration date	05/18/2010
Registrant	Blankinaki 22 River Terrace Suite 17-Q New York, NY 10282 UNITED STATES		

Goods/Services Subject to Cancellation

Class 016. First Use: 2009/05/31 First Use In Commerce: 2009/05/31 All goods and services in the class are cancelled, namely: Albums for photographs; Brag books; Memory books; Mini photo albums; Photograph album pages; Photograph albums; Photographic albums; Photographic prints; Wedding albums
Class 040. First Use: 2009/05/31 First Use In Commerce: 2009/05/31 All goods and services in the class are cancelled, namely: Creation of custom portraits and paintings based on photographs, snapshots or images provided by the customer; Digital on-demand printing services of books and other documents; Digital photo printing services; Electronic imaging, scanning, digitizing, alteration and/or retouching of photographic images; Photographic computer imaging; Printing of books; Printing of photographic images from digital media

Grounds for Cancellation

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

U.S. Application No.	85165728	Application Date	10/31/2010
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PIXABILITY		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2009/06/01 First Use In Commerce: 2009/06/01 Advertising and marketing; Advertising and marketing consultancy; Advertising and marketing services provided by means of indirect methods of marketing communications, namely, social media, search engine marketing, inquiry marketing, internet marketing, mobile marketing, blogging and other forms of passive, sharable or viral communications channels; Advertising and marketing services, namely, promoting the goods and services of others; Advertising services, namely, promoting and marketing the goods and services of others through all public communication means; Advertising services, public relations and marketing services, namely, promoting and marketing the goods and services of others through all public communication means; Advertising, marketing and promotion services; Advertising, promotion and marketing services in the nature of e-mail blast campaigns for others; Advice in the field of business management and marketing; Analysis of market research data and statistics; Business marketing consulting services; Business marketing services; Consulting services in the field of internet marketing; Development of marketing strategies and concepts; Marketing analysis services; Marketing consulting services relating to long-term business strategy development for non-profit organizations; On-line advertising and marketing services; Promotion, advertising and marketing of on-line websites; Providing information in the field of marketing and on-line marketing media via the Internet; Social media strategy and marketing consultancy focusing on helping clients create and extend their product and brand strategies by building virally engaging marketing solutions; Statistical evaluations of marketing data</p> <p>Class 041. First use: First Use: 2008/02/08 First Use In Commerce: 2008/03/14 Digital video, audio, and multimedia publishing services; Media production services, namely, video and film production; Multimedia entertainment services in the nature of development, production and post-production services in the fields of video and films; Multimedia entertainment services in the nature of recording, production and post-production services in the fields of music, video, and films; Post-production editing services in the field of music, videos and film; Production of sound and music video recordings; Production of visual effects for videos, DVDs, television and for internet web sites; Rental services for audio and video equipment; Special effects animation services for film and video; Video editing; Video production services; Video recording services</p>		
Attachments	85165728#TMSN.jpeg (1 page)(bytes) 20110417 pixability pixable petition for cancellation.pdf (6 pages)(103504 bytes)		

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	/asilverstein/
Name	Aaron Y. Silverstein
Date	04/18/2011

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

PIXABILITY, INC.,

Petitioner,

v.

BLANKINAKI (D/B/A PIXABLE),

Respondent.

Cancellation No.

Registration No. 3,789,569

PETITION FOR CANCELLATION

Pixability, Inc., a Delaware corporation with a principal place of business at One Broadway, 14th Floor, Cambridge, Massachusetts 02142, believes that it is and will be damaged by Registration No. 3,789,569 for the mark PIXABLE, and hereby petitions to cancel said registration.

The grounds for this petition are as follows:

1. Petitioner Pixability, Inc. (“Petitioner”) is owner of U.S. Serial No. 85/165,728 for the mark PIXABILITY (“Petitioner’s Application”), which is presently pending in connection with the following services:

International Class 35: Advertising and marketing; Advertising and marketing consultancy; Advertising and marketing services provided by means of indirect methods of marketing communications, namely, social media, search engine marketing, inquiry marketing, internet marketing, mobile marketing, blogging and other forms of passive, sharable, or viral communications channels; Advertising and marketing services, namely, promoting the goods and services of others; Advertising services, namely, promoting and marketing the goods and services of

others through all public communication means; Advertising services, public relations and marketing services, namely, promoting and marketing the goods and services of others through all public communication means; Advertising, marketing and promotion services; Advertising, promotion and marketing services in the nature of e-mail blast campaigns for others; Advice in the field of business management and marketing; Analysis of market research data and statistics; Business marketing consulting services; Business marketing services; Consulting services in the field of internet marketing; Development of marketing strategies and concepts; Marketing analysis services; Marketing consulting services relating to long-term business strategy development for non-profit organizations; On-line advertising and marketing services; Promotion, advertising and marketing of on-line websites; Providing information in the field of marketing and on-line marketing media via the Internet; Social media strategy and marketing consultancy focusing on helping clients create and extend their product and brand strategies by building virally engaging marketing solutions; Statistical evaluations;

International Class 41: Digital video, audio, and multimedia publishing services;

Media production services, namely, video and film production; Multimedia entertainment services in the nature of development, production and post-production services in the fields of video and films; Multimedia entertainment services in the nature of recording, production and post-production services in the fields of music, video, and films; Post-production editing services in the field of music, videos and film; Production of sound and music video recordings;

Production of visual effects for videos, DVDs, television and for internet web sites; Rental services for audio and video equipment; Special effects animation services for film and video; Video editing; Video production services; Video recording services.

2. On information and belief, Respondent Blankinaki (D/B/A Pixable) (“Respondent”) is owner of U.S. Registration No. 3,789,569 for the designation PIXABLE (the “Respondent’s Registration”), which is registered for the following goods:

International Class 16: Albums for photographs; Brag books; Memory books; Mini photo albums; Photograph album pages; Photograph albums; Photographic albums; Photographic prints; Wedding albums

International Class 40: Creation of custom portraits and paintings based on photographs, snapshots or images provided by the customer; Digital on-demand printing services of books and other documents; Digital photo printing services; Electronic imaging, scanning, digitizing, alteration and/or retouching of photographic images; Photographic computer imaging; Printing of books; Printing of photographic images from digital media

3. The application that matured into U.S. Registration 3,789,569 was filed on June 17, 2009, and U.S. Registration No. 3,789,569 claims a date of first use of May 31, 2009.

4. Pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), the Examining Attorney has refused registration of Petitioner’s Application citing a likelihood of confusion with Respondent’s Registration.

5. Petitioner uses the trademark PIXABILITY in connection with the advertisement, promotion, and rendering of its services, and has done so continuously since at least as early as February 2008, and owns extension common law rights throughout the United States in connection therewith.

6. Petitioner has used its PIXABILITY trademark continuously from a date long prior to Respondent's filing of its application to register the PIXABLE designation and, on information and belief, prior to Respondent's use of the PIXABLE designation.

7. Respondent's PIXABLE designation is likely to cause confusion with Petitioner's PIXABILITY trademark because such designation is confusingly similar to Petitioner's PIXABILITY trademark, the goods and services set forth in Respondent's Registration are similar or otherwise related to those offered by Petitioner under its PIXABILITY trademark, and the parties' goods and services are likely to be promoted through similar media, sold and offered through similar channels of commerce, and be directed to similar classes of purchasers.

8. Respondent's PIXABLE designation is likely to cause confusion or mistake or to deceive consumers by creating the false impression that Respondent's goods and services originate with or come from the same source as Petitioner's goods and services, or are endorsed by, sponsored by, or are otherwise connected or affiliate in some way with Petitioner and Petitioner's PIXABILITY trademark.

9. If Respondent is permitted to retain the challenged registration of, and thereby, the *prima facie* exclusive nationwide right to use in commerce, the PIXABLE designation in connection with similar goods and services to those sold by Petitioner under its PIXABILITY trademark, confusion in trade is likely to result all to the

detriment of Petitioner.

10. If Respondent is permitted to continue to maintain its registration, the same may be deemed incontestable after five (5) years from the date of registration, and Respondent would thereby obtain an incontestable right to the use of its designation in commerce and in any event, the continued existence of such registration casts a cloud upon Petitioner's right to continue to use, register, and expand its use of its valuable PIXABILITY trademark, thereby damaging Petitioner.

WHEREFORE, Petitioner prays that Registration No. 3,789,569 be cancelled and that this Petition for Cancellation be sustained.

Date: April 18, 2011

Respectfully submitted,

PIXABILITY, INC.

By its attorneys,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 18, 2011, a true and correct copy of the foregoing PETITION FOR CANCELLATION was served by first-class mail, postage pre-paid on:

Blankinaki (DBA Pixable)
22 River Terrace Suite 17-Q
New York, NY 10282

and

Pixable
137 Varick Street, Suite 603
New York, NY 10013
Attn: Inaki Berenguer, CEO


