

ESTTA Tracking number: **ESTTA412367**

Filing date: **06/02/2011**

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	Marc Hogue		
Entity	Individual	Citizenship	UNITED STATES
Address	300 N. Henkel Mesa, AZ 85331 UNITED STATES		

Attorney information	Jimmie Pursell Jennings Strouss & Salmon One East Washington Street Suite 1900 Phoenix, AZ 85004 UNITED STATES jpursell@jsslaw.com Phone:602-262-5812		
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Registration Subject to Cancellation

Registration No	3099847	Registration date	06/06/2006
Registrant	Skydive Arizona, Inc. 4900 N. Taylor Road Eloy, AZ 85231 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 1986/00/00 First Use In Commerce: 1986/00/00 All goods and services in the class are cancelled, namely: Educational services, namely, providing instructions and training in parachuting and skydiving

Grounds for Cancellation

The mark is merely descriptive	Trademark Act section 2(e)(1)
The mark is primarily geographically descriptive	Trademark Act section 2(e)(2)

Attachments	M. Hogue-Petition for Cancellation 3099847.pdf (4 pages)(1680685 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	/Jimmie Pursell/
Name	Jimmie Pursell

Date	06/02/2011
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MARC HOGUE, Petitioner, SKYDIVE ARIZONA, INC., Respondent.	Cancellation No. _____ Reg. No. 3,099,847
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PETITION FOR CANCELLATION OF REGISTRATION

Petitioner Marc Hogue, an individual residing in Phoenix, Arizona, believes he is being damaged by the registration of the trademark SKYDIVE ARIZONA (stylized) to Skydive Arizona, Inc. (“Respondent”), depicted in Registration No. 3,099,847, and hereby petitions to cancel the same.

The grounds for cancellation are:

1. Marc Hogue (“Petitioner” or “Hogue”) provides skydiving educational services, including instructions and training in parachuting and skydiving, within the State of Arizona, through business entities in which he is a member or shareholder, including Skydive Force, Inc., Skydive Coolidge, Inc., and Skydive Phoenix, Inc..
2. Respondent is an Arizona corporation having its principal place of business in Eloy, Arizona. On or about June 17, 2005, Respondent filed an application for federal registration of the mark SKYDIVE ARIZONA (the “Application”). The Application was filed under § 1(a) and 2(f) of the Trademark Act, 15 U.S.C. § 1051(a) and 15 U.S.C. § 1052(f), and was assigned serial number 76/641,146.
3. In the Application, Respondent claimed actual use of the mark in connection with “[e]ducational services, mainly, providing instructions and training of parachuting and skydiving,” in International Class 41.
4. Upon information and belief, Respondent offers skydiving instructions services only within the State of Arizona.

5. On or about January 12, 2006, the United States Patent and Trademark Office issued a non-final office action denying registration to Respondent because the word “SKYDIVE” was “merely descriptive because it describes a feature of the applicant’s educational services.”

6. By Examiner’s Amendment dated January 20, 2006, the Application was amended to include the disclaimer “no claim is made to the exclusive right to use skydive apart from the mark as shown.”

7. The Application passed to publication and was subsequently registered on June 6, 2006.

FIRST CLAIM FOR RELIEF

CANCELLATION FOR DESCRIPTIVENESS

8. Petitioner incorporates in this first claim for relief all of the prior paragraphs in this Petition for Cancellation.

9. The mark SKYDIVE ARIZONA is descriptive because the mark as a whole describes Respondent’s services, i.e., skydiving instruction within the State of Arizona.

10. The United States Patent and Trademark Office has already required Respondent to disclaim exclusive use of the word “SKYDIVE” because that term is descriptive of a feature of Respondent’s services.

11. Respondent’s registration prevents others who provide educational and instructional skydiving services in Arizona from describing their services being offered without facing a challenge from Respondent.

12. Petitioner is harmed by the registration of Respondent’s mark because Petitioner is unable to offer his goods and services, i.e., skydiving instruction in Arizona, without facing a challenge from Respondent for alleged infringement of Respondent’s mark.

13. For the foregoing reasons, Petitioner is entitled to an order cancelling the Registration of Respondent’s mark.

SECOND CLAIM FOR RELIEF

CANCELLATION FOR MARK CONSISTING OF GEOGRAPHICAL INDICATION

14. Petitioner incorporates in this second claim for relief all of the prior paragraphs in this Petition for Cancellation.

15. Upon information and belief, Respondent offers its skydiving services exclusively within the State of Arizona.

16. The word Arizona when used in conjunction with the descriptive word skydive is merely geographically descriptive of Respondent's skydiving services.

17. Respondent's mark is unregistrable pursuant to § 2(e) of The Trademark Act, 15 U.S.C. § 1052(e).

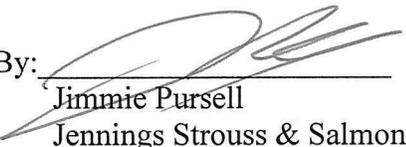
18. Petitioner is harmed by the registration of Respondent's mark because Petitioner also provides skydiving education and instruction within the State of Arizona and cannot describe his services without risking infringing Respondent's mark.

19. For the foregoing reasons, Petitioner is entitled to an Order cancelling the registration of Respondent's mark.

WHEREFORE, Petitioner respectfully requests an order granting this Petition of Cancellation and cancelling Registration No. 3,099,847.

June 2, 2011

Respectfully submitted,

By: 

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Certificate of Service

The undersigned certifies that a copy of this Petition for Cancellation was sent by certified first class mail to: Sid Leach, Esq., SNELL & WILMER, One Arizona Center, 400 E. Van Buren Street, Suite 1900, Phoenix, AZ 85004 and to: SKYDIVE ARIZONA 4900 N. Taylor Road, Eloy, AZ 85231, this 2nd day of June, 2011.



Jimmie W. Pursell