

ESTTA Tracking number: **ESTTA449615**

Filing date: **01/05/2012**

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	Nicky Butler		
Entity	Individual	Citizenship	UNITED STATES
Address	100 Lincoln Rd Miami Beach, FL 33139 UNITED STATES		

Attorney information	Jean Perwin Law Offices of Jean S. Perwin 25 SE 2nd Ave Suite 1135 Miami, FL 33131 UNITED STATES jsperwin@jsplaw.com Phone:305-372-1630		
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Registration Subject to Cancellation

Registration No	3724493	Registration date	12/15/2009
Registrant	GEO Management LLC 7310 Smoke Ranch Rd. - Ste. "I" Las Vegas, NV 76128 UNITED STATES		

Goods/Services Subject to Cancellation

Class 014. First Use: 1998/10/00 First Use In Commerce: 1998/10/00 All goods and services in the class are cancelled, namely: Jewelry

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85329681	Application Date	05/25/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NB NICKY BUTLER		

Design Mark	
Description of Mark	The mark consists of The initials "NB" intertwined and appearing in white on a black rectangle appearing above a line under which the name "Nicky Butler" appears.
Goods/Services	Class 014. First use: First Use: 2001/05/01 First Use In Commerce: 2001/05/01 Jewelry

Attachments	85329681#TMSN.jpeg (1 page)(bytes) Butler Cancellation Petition1.pdf (6 pages)(57314 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	/jean perwin/
Name	Jean Perwin
Date	01/05/2012

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

In the matter of Trademark Registration No. 3,724,493

For the Mark: NB

Date registered: December 15, 2009

Nicky Butler)
Petitioner)
)
V.) Cancellation No:
)
Geo Management, LLC)
Registrant)

PETITION TO CANCEL

In the matter of Registration No. 3724493 for the trademark NB, for jewelry, granted December 15, 2009 to GEO Management LLC LIMITED LIABILITY COMPANY NEVADA 7310 Smoke Ranch Rd. - Ste. "I" Las Vegas, NEVADA 76128 (Registrant).

Nicky Butler, an individual residing in Miami, FL (Petitioner), believes that it will be damaged by said registration and hereby petitions for cancellation.

The grounds for cancellation are as follows:

1. Petitioner has applied to register the mark NB Nicky Butler under Serial Number 85329681. (The Application)

2. Petitioner has been using the NB Nicky Butler mark exclusively since 1999 on his jewelry designs. The initials NB represent his name, Nicky Butler. They have been sold continuously on the Home Shopping Network since 1999.

Petitioner's jewelry is in a highly recognizable style, noted for its open-work designs and intensive use of oversized and multiple stones. His unconventional approach resembles antique museum gallery collections and are held on permanent display in London's Victoria & Albert Museum. They have consistently and continuously been sold under the "Nicky Butler", "NB" and "NB Nicky Butler" marks.

3. Petitioner has received an official action from the United States Patent and Trademark Office in the Application refusing registration of Petitioner's Mark on the grounds that its Mark for jewelry is confusingly similar to Registrant's "NB" Registration No. 3724493 for jewelry.

4. In 1998 Registrant and Petitioner entered into an oral agreement to sell Petitioner's jewelry design on the Home Shopping Network (HSN). The agreement affected only sales

on HSN. There was no agreement to transfer any of the Nicky Butler or NB marks to Registrant.

5. Unbeknownst to Petitioner and without his consent, Registrant filed the above NB registration and knowingly and intentionally made false and material misrepresentations to the USPTO with the clear intent to deceive thereby committing fraud on the Trademark Office. Registrant made the following false claims:

A. Registrant failed to disclose the fact that it was not the owner of the NB Mark and that it actually belonged to Petitioner and intended to procure a registration to which it was not entitled.

B. Registrant falsely and knowingly stated that it had exclusive ownership of the NB mark.

C. Registrant falsely stated that there was no one else who had rights in the NB Mark it was seeking to register when it was well aware of Petitioner's superior rights in the NB mark.

D. Because of their business relationship, Registrant was well aware that there was another use of the identical mark by Petitioner and could not have had a reasonable belief that it owned exclusive rights to the Mark.

E. Registrant falsely claimed a first use date of 1998 when, in fact, Registrant had never used the NB mark.

6. On October 5, 2007, also unbeknownst to Petitioner, Registrant filed an application for the Mark "NB Nicky Butler" (Serial No. 77-297823). In his First Action Notice of January 12, 2008, the Examiner requested clarification of whether Nicky Butler identified a particular living individual and if so, requested consent.

7. Because Registrant knew Nicky Butler was a living individual and it could not obtain his consent for the Registration, it could not respond to the Action Notice and the application was abandoned on August 11, 2008.

8. In order to avoid the consent problems, on October 5, 2008, Registrant filed a new identical registration - the current NB registration - but removed the name "Nicky Butler" from the application clearly intending to obtain

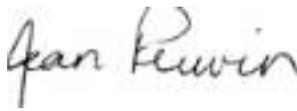
the registration by further misleading the PTO as to its claims of ownership.

9. Petitioner has legal rights superior to Registrant's rights because it is the first and only user of the NB Mark for the sale of jewelry and because registrant's allegation of use is false. Therefore Petitioner has priority over Registrant. Registrant has no rights in the Mark and cannot claim use as of any date. In its application, Petitioner alleges a first use date of 1998. The instant NB mark was not in use by anyone until 1999 when Petitioner first began using it.

WHEREFORE, Petitioner believes that it will be damaged by said registration and prays that it be cancelled.

Respectfully Submitted,

By:



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Petitioner hereby appoints Jean S. Perwin, attorney at law, 25 S.E. Second Avenue, Suite 1135, Miami, FL 33131, to represent the Petitioner in this cancellation proceeding.

/nicky butler/

Nicky Butler