

ESTTA Tracking number: **ESTTA453077**

Filing date: **01/25/2012**

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	Swig, Inc.		
Entity	Corporation	Citizenship	Texas
Address	816 Camaron, Suite 100 San Antonio, TX 78212 UNITED STATES		

Attorney information	John C. Cave Gunn, Lee & Cave, P.C. 300 Convent, Suite 1080 San Antonio, TX 78205 UNITED STATES jcave@gunn-lee.com, melissa.hudson@gunn-lee.com Phone:(210) 886-9500		
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Registration Subject to Cancellation

Registration No	3885993	Registration date	12/07/2010
Registrant	Temperance Distilling Company, Inc. 7312 Express Rd. Temperance, MI 48182 UNITED STATES		

Goods/Services Subject to Cancellation

Class 033. First Use: 2009/04/00 First Use In Commerce: 2009/04/00 All goods and services in the class are cancelled, namely: Alcoholic beverages except beers

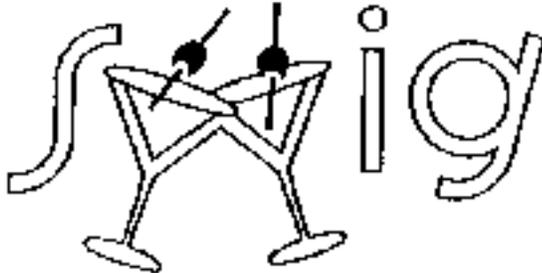
Grounds for Cancellation

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

U.S. Registration No.	3416488	Application Date	11/14/2003
Registration Date	04/29/2008	Foreign Priority Date	NONE
Word Mark	SWIG		

Design Mark	<h1>SWIG</h1>
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 1997/05/26 First Use In Commerce: 1997/05/26 Restaurant and cocktail lounge services

U.S. Registration No.	2243360	Application Date	03/11/1997
Registration Date	05/04/1999	Foreign Priority Date	NONE
Word Mark	SIG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1997/05/26 First Use In Commerce: 1997/05/26 cocktail lounge services		

U.S. Registration No.	3836245	Application Date	04/19/2004
Registration Date	08/17/2010	Foreign Priority Date	NONE
Word Mark	SWIG SALOON		

Design Mark	SWIG SALOON
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2010/05/21 First Use In Commerce: 2010/05/21 Restaurant, bar, cocktail lounge, and prepared food take-out services

U.S. Registration No.	1839570	Application Date	08/09/1993
Registration Date	06/14/1994	Foreign Priority Date	NONE
Word Mark	SWIG SODA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1991/04/01 First Use In Commerce: 1991/04/01 carbonated soft drinks		

Attachments	76559301#TMSN.gif (1 page)(bytes) 75255287#TMSN.gif (1 page)(bytes) 78403818#TMSN.jpeg (1 page)(bytes) 74422110#TMSN.gif (1 page)(bytes) Petition for Cancellation.pdf (5 pages)(21176 bytes) Exhibit A - SWIG.pdf (2 pages)(12251 bytes) Exhibit B - SWIG and Design.pdf (2 pages)(13973 bytes) Exhibit C - SWIG SALOON.pdf (2 pages)(18733 bytes) Exhibit D - SWIG SODA.pdf (2 pages)(14747 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/John C. Cave/
Name	John C. Cave
Date	01/25/2012

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

In the Matter of Trademark Registration No. 3,885,993.
For the mark SWIG.
Registered December 7, 2010.

SWIG, INC.

Petitioner,

Cancellation No. _____

v.

TEMPERANCE DISTILLING
COMPANY, INC.

Registrant.

PETITION FOR CANCELLATION

Swig, Inc., a corporation organized and existing under the laws of Texas, located and doing business at 816 Camaron, Suite 100, San Antonio, Texas 78212, believes that it will be damaged by Registration No. 3,885,993 as it relates to goods in Class 33, namely, alcoholic beverages except beers, and hereby petitions to cancel the registration of the mark SWIG for these goods.

As grounds therefor, it is alleged that:

1. Petitioner has adopted and continuously used the trademark SWIG since at least as early as May 26, 1997 to the present, in connection with restaurant and cocktail lounge services and other related services in Class 43.
2. Petitioner has obtained the following federal trademark registrations:
 - a. U.S. Registration No. 3,416,488 for the mark SWIG for restaurant and cocktail lounge services;
 - b. U.S. Registration No. 2,243,360 for the mark  for cocktail lounge services;
 - c. U.S. Registration No. 3,836,245 for the mark SWIG SALOON for restaurant, bar, cocktail lounge and prepared food take-out services; and,

- d. U.S. Registration No. 1,839,570 for the mark SWIG SODA for carbonated soft drinks.

Copies of each of these registrations are attached hereto as Exhibits A, B, C, and D, respectively.

3. Registration No. 2,243,360 for the mark , issued May 4, 1999, and Registration No. 1,839,570 for the mark SWIG SODA, issued June 14, 1994, have been renewed pursuant to the provisions of the Lanham Act and have become incontestable and are owned by Petitioner as shown by the registrations on file with the United States Patent and Trademark Office.

4. Registration Nos. 3,416,488 for SWIG and 3,836,245 for SWIG SALOON were issued April 29, 2008 and August 17, 2010, respectively, and are live and in use by the Petitioner.

5. Petitioner also has Texas state trademark registrations for  (Registration No. 800320780) and SWIG word mark (Registration No. 800320778). These state registrations were issued March 22, 2004 and November 8, 2004, respectively.

6. Registration No. 3,885,993, sought to be cancelled, is for the trademark name SWIG, registered for alcoholic beverages except beers. Such goods are closely related to the services of Petitioner.

7. There is no issue as to priority of use. Petitioner used and the registrations issued for , SWIG, and SWIG SODA long prior to the first date of use of the Registrant, April 2009.

8. Petitioner first opened up its restaurant and bar under the name SWIG in May 1997 on the popular San Antonio Riverwalk in San Antonio, Texas. This new bar, which featured jazz music and had a swanky martini bar theme, met with immediate success. It has attracted a high end clientele made up of both local San Antonio residents and tourists and

business visitors to the city on an equal basis. As a result, the SWIG brand has become known to visitors from across the state of Texas and, to a lesser extent, the United States and world.

9. Due to the popularity of the original location, Petitioner expanded and opened up another location on the north side of San Antonio in 2006 under the name Swig North. Petitioner also opened a location in Memphis in 2003 under the name SWIG. The original location of SWIG on the San Antonio Riverwalk is still a thriving and popular night spot.

10. Since 1997, Petitioner has spent an enormous amount of resources developing and marketing the SWIG. The public has come to recognize the distinctive SWIG name and associates that name with Petitioner. As a result, Petitioner has developed a significant amount of goodwill in association with the use of the marks and has established an excellent reputation regarding the quality of its services under the SWIG brand.

11. If the Registrant is permitted to retain the registration sought to be cancelled, and thereby, the *prima facie* exclusive right to use in commerce the mark SWIG for its liquor products, confusion in trade is likely to result from any concurrent use of Petitioner's mark and that of the Registrant all to the great detriment of Petitioner, who has expended considerable sums and effort in promoting its marks.

12. Purchasers are likely to consider the goods of the Registrant sold under the mark SWIG as emanating from Petitioner, resulting in confusion and damage to Petitioner's marks and the goodwill associated therewith.

13. Concurrent use of the mark by the Registrant and Petitioner may result in irreparable damage to Petitioner's reputation and goodwill, if the goods sold by the Registrant are inferior, since purchasers are likely to attribute the source of the Registrant's goods to the Petitioner.

14. If the Registrant is permitted to retain the registration sought to be cancelled, a cloud will be placed on Petitioner's title in and to its trademark, SWIG, and on its right to enjoy the free and exclusive use thereof in connection with the provision of its services, all to the great injury of Petitioner.

WHEREFORE, PREMISES CONSIDERED, Petitioner prays the Board cancel U.S. Trademark Registration No. 3,885,993. This petition to cancel is being filed electronically and the filing fee of \$300.00 required by 37 C.F.R. § 2.6(a)(16) is being submitted via credit card payment. Should there be any deficient fees concerning this matter, the Commissioner is authorized to draw upon the Deposit Account of Gunn, Lee & Cave, P.C., Account No. 500808, without further or more specific authorization.

Date: January 25, 2012

Respectfully submitted,

GUNN, LEE & Cave, P.C.
300 Convent, Suite 1080
San Antonio, Texas 78205
(210) 886-9500 Telephone
(210) 886-9883 Facsimile

By: */John C. Cave/*
John C. Cave
Registration No. 48,084
Texas Bar No. 00783812

ATTORNEYS FOR PETITIONER

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that a true and correct copy of the foregoing Petition for Cancellation is being filed with the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, via electronic transmission on this 25th day of January, 2012.

/John C. Cave/
John C. Cave

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Cancellation is being deposited with the United States Postal Service as Express Mail on this 25th day of January, 2012, in an envelope addressed to the attorney of record listed as the Correspondent for U.S. Trademark Registration No. 3,885,993:

Carrie A. Johnson
Fraser Clemens Martin & Miller, LLC
28366 Kensington Lane
Perrysburg, Ohio 43551-4175

/John C. Cave/
John C. Cave

EXHIBIT A

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,416,488

Registered Apr. 29, 2008

**SERVICE MARK
PRINCIPAL REGISTER**

SWIG

SWIG, INC. (TEXAS CORPORATION)
816 CAMARON, SUITE 1.00
SAN ANTONIO, TX 78212

FOR: RESTAURANT AND COCKTAIL LOUNGE
SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 5-26-1997; IN COMMERCE 5-26-1997.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 1,839,570.

SER. NO. 76-559,301, FILED 11-14-2003.

LINDA M. KING, EXAMINING ATTORNEY

EXHIBIT B

Int. Cl.: 42

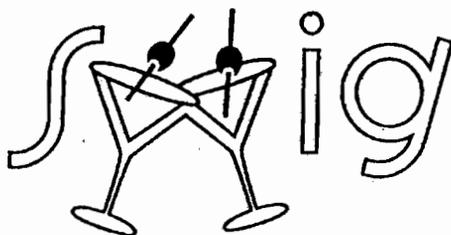
Prior U.S. Cls.: 100 and 101

Reg. No. 2,243,360

United States Patent and Trademark Office

Registered May 4, 1999

**SERVICE MARK
PRINCIPAL REGISTER**



SWIG, INC. (TEXAS CORPORATION)
102 MORSE
SAN ANTONIO, TX 78209

FIRST USE 5-26-1997; IN COMMERCE
5-26-1997.

SN 75-255,287, FILED 3-11-1997.

FOR: COCKTAIL LOUNGE SERVICES, IN
CLASS 42 (U.S. CLS. 100 AND 101).

SALLY SHIN, EXAMINING ATTORNEY

EXHIBIT C

United States of America

United States Patent and Trademark Office

SWIG SALOON

Reg. No. 3,836,245

Registered Aug. 17, 2010

Int. Cl.: 43

SERVICE MARK

PRINCIPAL REGISTER

SWIG, INC. (TEXAS CORPORATION)
816 CAMARON SUITE 100
SAN ANTONIO, TX 78212

FOR: RESTAURANT, BAR, COCKTAIL LOUNGE, AND PREPARED FOOD TAKE-OUT SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 5-21-2010; IN COMMERCE 5-21-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SALOON", APART FROM THE MARK AS SHOWN.

SN 78-403,818, FILED 4-19-2004.

SOPHIA S. KIM, EXAMINING ATTORNEY



David J. Kyffas

Director of the United States Patent and Trademark Office

EXHIBIT D

Int. Cl.: 32

Prior U.S. Cl.: 45

United States Patent and Trademark Office

Reg. No. 1,839,570

Registered June 14, 1994

TRADEMARK
PRINCIPAL REGISTER



WISE, KEVIN J. (UNITED STATES CITIZEN),
DBA SWIG SODA
8451 WESTERN AVENUE
OMAHA, NE 68114

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SODA", APART FROM THE
MARK AS SHOWN.

FOR: CARBONATED SOFT DRINKS, IN
CLASS 32 (U.S. CL. 45).

FIRST USE 4-1-1991; IN COMMERCE
4-1-1991.

SER. NO. 74-422,110, FILED 8-9-1993.

SAMUEL E. SHARPER JR., EXAMINING AT-
TORNEY