

ESTTA Tracking number: **ESTTA454789**

Filing date: **02/04/2012**

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	Phil M Duff		
Entity	Individual	Citizenship	UNITED STATES
Address	2408 Gower St. Los Angeles, CA 90068 UNITED STATES		

Correspondence information	Phil M Duff 2408 Gower St. Los Angeles, CA 90068 UNITED STATES phil323@sbcglobal.net Phone:(323)627-8763		
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**Registration Subject to Cancellation**

Registration No	4060367	Registration date	11/22/2011
Registrant	Naylor, Heather 5042 wilshire Blvd. # 417 Heather Naylor Los Angeles, CA 90036 UNITED STATES		

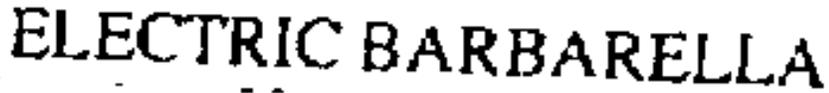
**Goods/Services Subject to Cancellation**

<p>Class 041. First Use: 2000/09/19 First Use In Commerce: 2011/05/04 All goods and services in the class are cancelled, namely: Composition of music for others; Entertainment in the nature of an on-going special variety, news, music or comedy show featuring music and music based entertainment broadcast over television, satellite, audio, and video media; Entertainment in the nature of dance performances; Entertainment services in the nature of live musical performances; Entertainment services, namely, providing a television program in the field of music and music based entertainment via a global computer network; Entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials featuring music and music based entertainment</p>
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**Grounds for Cancellation**

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

## Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2531933	Application Date	01/16/2001
Registration Date	01/22/2002	Foreign Priority Date	NONE
Word Mark	ELECTRIC BARBARELLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2000/12/15 First Use In Commerce: 2000/12/15 women's pants, shirts, skirts, jackets, hats, wristbands and belts		

Attachments	76197121#TMSN.gif ( 1 page )( bytes ) EBPetitionFor Cancel.pdf ( 5 pages )(71702 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	/Phil M Duff/
Name	Phil M Duff
Date	02/04/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the Matter of U.S. Registration 4,060,367,  
For the mark, THE ELECTRIC BARBARELLAS,  
Registered on the Supplemental Register November 22, 2011.

Phil Duff, dba Electric Barbarella,	:
	:
Petitioner,	:
	:
vs.	: Cancellation No. _____
	:
Heather Naylor, dba The Electric Barbarellas,	:
	:
Registrant.	:
_____	:

**PETITION TO CANCEL**

Petitioner Phil Duff, dba Electric Barbarella (hereinafter “Petitioner”), , with a principal place of business located at 2408 Gower St. Los Angeles CA 90068 believes he is and will continue to be damaged by the continued registration of U.S. Registration 4,060,367 for the mark THE ELECTRIC BARBARELLAS and, accordingly, hereby petitions this honorable tribunal to cancel the same pursuant to 15 U.S.C. § 1064 and 37 C.F.R. § 2.111(b).

**Grounds for Cancellation**

As grounds for the instant Petition to Cancel, it is alleged that the continued registration of Registrant Heather Naylor’s (hereinafter “Registrant”) mark THE ELECTRIC BARBARELLAS as more fully displayed in U.S. Registration No. 4,060,367 would be likely to cause confusion with Petitioner’s ELECTRIC BARBARELLA mark which retain priority of use over Registrant’s mark THE ELECTRIC BARBARELLAS by virtue of its prior use in commerce in the United States.

## **Statement of Facts**

In support of the instant Petition to Cancel, it is alleged that:

1. For many years, Phil Duff dba ELECTRIC BARBARELLA (referred to as “Petitioner”) has been and now is engaged in the development and production of women's pants, shirts, skirts, jackets, hats, wristbands and belts for the entertainment industry as well as the general public. Phil Duff dba ELECTRIC BARBARELLA is also engaged in the fashion related business of styling and branding entertainment clients with ELECTRIC BARBARELLA clothing in a wide range of media including photography, film, television, music and virtual projects.

2. Petitioner has spent large sums of money and expended tremendous effort in promoting goods and services under its ELECTRIC BARBARELLA mark which have become famous and associated exclusively with Petitioner and its goods and services. The goodwill of the business connected with the use of, and symbolized by, the ELECTRIC BARBARELLA marks and is an asset of incalculable value.

3. Specifically, Petitioner is the owner of the United States Patent and Trademark Registration No. 2,531,933 which was filed on January 16, 2001 for the mark ELECTRIC BARBARELLA for goods and services in connection with “women's pants, shirts, skirts, jackets, hats, wristbands and belts” in International Class 25. The registration maintains a date of first use of at least as early as December 15, 2000.

4. Registrant filed an application with the United States Patent and Trademark Office for the mark THE ELECTRIC BARBARELLAS on or about January 11, 2009 to be used in connection with Composition of music for others; Entertainment in the nature of an on-going special variety, news, music or comedy show featuring music and music based entertainment broadcast over television, satellite, audio, and video media;

Entertainment in the nature of dance performances; Entertainment services in the nature of live musical performances; Entertainment services, namely, providing a television program in the field of music and music based entertainment via a global computer network; Entertainment services, namely, providing a web site featuring musical performances, musical videos, related film clips, photographs, and other multimedia materials featuring music and music based entertainment. The Application alleged a first use date in commerce on or about May 4, 2011. The Application received Serial Number 77,647,287.

5. Registrant's mark received U.S. Registration 4,060,367 on November 22, 2011.

6. Registrant's mark is confusingly similar to the mark of Petitioner.

7. Petitioner's first use of its name and filing dates of applications identified in Attachment A are earlier than Registrant's filing date of the Application and Registration. Additionally, upon information and belief, Petitioner began using its marks in commerce prior to Registrant's use of its mark in commerce.

8. Upon information and belief, Registrant's goods and services are offered to the same classes of consumers and at least through some of the same channels of trade as Petitioner's goods and services. As applied to Registrant's goods, Registrant's THE ELECTRIC BARBARELLAS mark so resembles the Petitioner's and related ELECTRIC BARBARELLA mark that it is likely to cause confusion, or cause to mistake, or to deceive as to the source of the goods.

9. Upon information and belief, the continued registration of Registrant's THE ELECTRIC BARBARELLAS mark diminishes and dilutes the distinctive quality of Petitioner's famous ELECTRIC BARBARELLA marks. Customers and potential

customers are likely to believe that Registrant's goods originate from, or are sponsored and approved by Petitioner when that is not the case. Any dissatisfaction with Registrant's goods would reflect upon and irreparably damage Petitioner's reputation and goodwill embodied in its ELECTRIC BARBARELLA marks and name.

10. Registrant's goods and services so closely relate to Petitioner's goods and services that the public is likely to be confused, to be deceived, and to assume erroneously that the Registrant's services are those of the Petitioner, or the Registrant is in some way connected or affiliated with, or approved or sponsored by, Petitioner, all to Petitioner's irreparable damage.

10. Petitioner will be damaged by Registrant's continued registration of the THE ELECTRIC BARBARELLAS mark for the goods identified in U.S. Registration 4,060,367 as a result of the aforementioned confusion, mistake, and deception.

11. If Registrant is granted the continued registration of the mark as more fully identified by U.S. Registration 4,060,367, it would support statutory rights for Registrant in violation and derogation of Petitioner's prior rights which would be a source of damage to Petitioner.

12. By reason of the foregoing, Petitioner will be seriously damaged by the continued registration of Registrant's mark THE ELECTRIC BARBARELLAS. WHEREFORE Petitioner Phil Duff, prays that the instant petition be granted and U.S. Registration No. 4,060,367 be cancelled.

Respectfully submitted this 30th day of January 2012.

Phil M. Duff

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