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Filing date: **03/15/2012**

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	EPFF, LLC		
Entity	LLC	Citizenship	Delaware
Address	874 Walker Road Suite C Dover, DE 19904 UNITED STATES		

Attorney information	Theodore R. Remaklus Wood, Herron & Evans, L.L.P. 441 Vine Street 2700 Carew Tower Cincinnati, OH 45202 UNITED STATES tremaklus@whe-law.com Phone:513-241-2324
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Registration Subject to Cancellation

Registration No	3975645	Registration date	06/07/2011
Registrant	Glitzer, David M. 190 East 7th st new york, NY 10009 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2010/11/10 First Use In Commerce: 2010/11/10 All goods and services in the class are cancelled, namely: Clothing, namely, shirts, pants, hats, socks, swimwear, underwear, jackets

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	The Respondent has not used the alleged mark as a trademark, but rather has only used it as a decorative feature that does not function as a trademark within the meaning of Trademark Act Sections 1, 2 and 45.

Attachments	Petition for cancellation.pdf (6 pages)(27938 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	/theodore r remaklus/
Name	Theodore R. Remaklus
Date	03/15/2012

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

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EPFF, LLC) Cancellation No. _____
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Petitioner,))
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v.))
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David M. Glitzer))
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Respondent.))
_____))

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Petitioner, EPFF, LLC, a Delaware limited liability company having a place of business at 874 Walker Road, Suite C, Dover, Delaware 19904 ("Petitioner"), believes that it is and will continue to be damaged by the registration of the mark shown in Registration No. 3,975,645 for the trademark CONEY ISLAND SURF and hereby petitions to cancel said registration.

GROUND FOR PETITION

As grounds for this petition, Petitioner alleges as follows:

1. Petitioner is the owner of United States Trademark Application Serial No. 85/424,569 (hereinafter "the '569 Application") filed September 16, 2011 under Section 1(b) of the Trademark Act mark for the mark CONEY ISLAND SURF COMPANY for use in connection with the following goods:

Sunglasses; cases for eyeglasses and sunglasses; MP3 players; CD players; audio and video cassette recorders; cameras; camcorders; video cameras; accessories for MP3, audio, and video devices, namely, protective cases, chargers, transmitters, speakers, adaptors, cables, headphones and ear buds; cellular telephone accessories, namely, protective cases, chargers, headphones, and cables; mobile electronics accessories, namely, notebook cases, notebook stands, and docking stations; computer peripheral equipment, namely, keyboards, mice, mouse pads, trackballs, joysticks, and docking stations; telephony equipment, namely, telephones, microphones, headsets, and headphones; USB cables; USB hardware, namely, USB hubs, USB connectors, and USB chargers in International Class 9

Handbags; purses; wallets; backpacks, tote bags in International Class 18

Combs; hair brushes in International Class 21

Barrettes; braids; hair pins; ribbons in International Class 26

Baseballs; baseball bats; baseball gloves; basketballs; footballs; football shoulder pads; soccer balls; tennis balls; tennis racquets; volleyballs; fishing poles; fishing reels; fishing tackle; skateboards in International Class 28

2. On January 9, 2012, the Examining Attorney of the '569 Application issued an Office Action refusing to register the CONEY ISLAND SURF COMPANY mark for "Sunglasses; cases for eyeglasses and sunglasses" in International Class 9, and all of the goods in International Classes 18, 21, 26 and 28 under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the grounds that the Examining Attorney concluded there was a likelihood of confusion with the CONEY ISLAND SURF mark of U.S. Registration No. 3,975,645, which is registered for use with "Clothing, namely, shirts, pants, hats, socks, swimwear, underwear, jackets" in Class 25.

3. As a result of the Office Action in the '569 Application refusing to register Petitioner's CONEY ISLAND SURF COMPANY mark over the CONEY ISLAND SURF mark of U.S. Registration No. 3,975,645, Petitioner is being damaged by Registration No. 3,975,645 within the meaning of 15 U.S.C. § 1064.

4. On information and belief, Respondent David M. Glitzer is the owner of Registration No. 3,975,645, and is in individual with an address of 190 East 7th St., New York, New York 10009.

5. On information and belief, Respondent is not currently using, and has never used, the CONEY ISLAND SURF mark of Registration No. 3,975,645 as a trademark. Instead, the Respondent has only used the phrase in an ornamental/decorative manner as is shown in the specimen submitted by Respondent to the Trademark Office with the Statement of Use on January 3, 2011 in Application No. 78/715,283, which issued as Registration No. 3,975,645. On January 15, 2011, the Examining Attorney the '283 Application correctly refused registration on the grounds that the

applied-for mark, as used on the specimen of record, is merely a decorative or ornamental feature of the goods, it does not function as a trademark to identify and distinguish applicant's goods from those of others to indicate the source of applicant's goods.

Despite the fact that Respondent failed to substantively respond to the refusal, the Statement of Use was subsequently accepted and Registration No. 3,975,645 issued. Thus, as the manner in which Respondent has used the phrase CONEY ISLAND SURF is merely as a decorative feature that does not identify and distinguish the goods, the CONEY ISLAND SURF phrase, as used by Respondent, does not function as a trademark within the meaning of 15 U.S.C. §§ 1051, 1052, and 1127, and Registration No. 3,975,645 should be cancelled.

6. On information and belief, at the time that Respondent filed the Statement of Use on January 13 2011, he was only using the phrase CONEY ISLAND SURF on and in connection with shirts, and had not yet used the phrase on or in connection with "pants, hats, socks, swimwear, underwear, jackets", yet he filed the Statement of Use stating under oath that the phrase was in use on or in connection with all of the goods.

7. On information and belief, Respondent filed the Statement of Use with full knowledge that he had not and was not using the phrase CONEY ISLAND SURF on or in connection with pants, hats, socks, swimwear, underwear, or jackets, and thus falsely stated under oath in the Statement of Use that the phrase CONEY ISLAND SURF was in use in commerce in connection with pants, hats, socks, swimwear, underwear, and jackets.

8. On information and belief, Respondent knew at the time that he filed the Statement of Use on January 3, 2011 that he had not used the phrase CONEY ISLAND SURF in interstate commerce on or in connection with pants, hats, socks, swimwear, underwear, or jackets.

9. On information and belief, Respondent's statement to the USPTP was a material misrepresentation that was intended to deceive the USPTO into believing that Respondent had met the statutory conditions for filing a Statement of Use required to grant a registration for the phrase CONEY ISLAND SURF. The statement was material because the USPTO would not have granted Registration No. 3,975,645 in the absence of the Respondent attesting that he had met those requirements.

10. On information and belief, the United States Patent and Trademark Office relied upon the false statement in the Statement of Use when it issued a Notice of Acceptance of Statement of Use on May 5, 2011 and in issuing Registration No. 3,975,645 on June 7, 2011.

11. The false statement made by Respondent to the USPTO in the '283 Application constitutes fraud and renders Registration No. 3,975,645 void, unenforceable and invalid.

WHEREFORE, Petitioner prays that the Petition for Cancellation be sustained in favor of Petitioner and that U.S. Registration No. 3,975,645 for the mark CONEY ISLAND SURF mark be canceled.

The fee required under 37 C.F.R. § 2.6(a)(16) is being submitted herewith. The Commissioner is authorized to charge Deposit Account No. 23-3000 for any deficiencies in the filing fee and any and all other fees associated with filing the Petition for Cancellation.

Respectfully submitted,

EPFF, LLC

Date: March 18, 2012

By: /s/ Theodore R. Remaklus

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Petition for Cancellation** has been served by first class mail, postage prepaid, upon Respondent, David M. Glitzer, 190 East 7th St., New York, New York 10009, this 15th day of March, 2012.

/s/ Theodore R. Remaklus
Theodore R. Remaklus

Attorney for Petitioner
EPFF, LLC