

ESTTA Tracking number: **ESTTA464462**

Filing date: **03/29/2012**

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    | JONATHAN K. SMITH   |             |   |
| Entity  | Individual  | Citizenship | SHINNECOCK INDIAN NATION, A FEDERALLY RECOGNIZED INDIAN TRIBE |
| Address | OLD POINT ROAD, SHINNECOCK RESERVATION VIA, P.O. BOX 5036<br>SOUTHAMPTON, NY 11969<br>UNITED STATES |             |   |

|                      |  |
|----------------------|--|
| Attorney information | SCOTT MICHAEL MOORE, ESQ.<br>MOORE INTERNATIONAL LAW PLLC<br>45 ROCKEFELLER PLAZA SUITE 2000<br>NEW YORK, NY 10111<br>UNITED STATES<br>smm@milopc.com Phone:212-332-3474 |
|----------------------|--|

**Registration Subject to Cancellation**

|                 |  |                   |            |
|-----------------|--|-------------------|------------|
| Registration No | 3883715  | Registration date | 11/30/2010 |
| Registrant      | Barrett, Reginald C.<br>20 Laurel Hill Lane<br>Amagansett, NY 11930<br>UNITED STATES |                   |            |

**Goods/Services Subject to Cancellation**

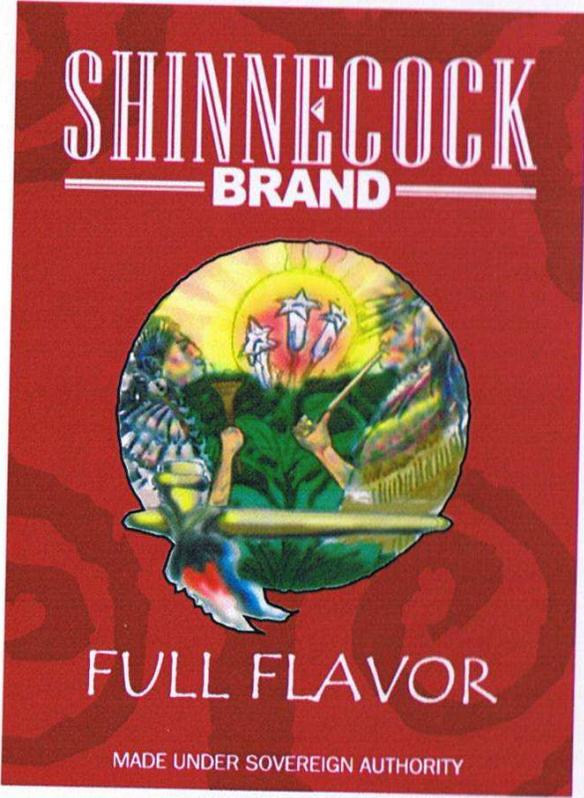
|  |
|--|
| Class 034. First Use: 2009/06/29 First Use In Commerce: 2009/06/29<br>All goods and services in the class are cancelled, namely: Cigarettes; cigars; tobacco |
|--|

**Grounds for Cancellation**

|   |   |
|---|---|
| Deceptiveness                                   | Trademark Act section 2(a)                  |
| False suggestion of a connection                | Trademark Act section 2(a)                  |
| <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/<br>Registration No. | NONE | Application Date | NONE |
| Registration Date                     | NONE |                  |      |

|                |  |
|----------------|--|
| Design Mark    |  |
| Goods/Services | cigarettes; tobacco  |

|             |   |
|-------------|---|
| Attachments | Shinnecock Brand Full JPEG - Copy.jpg<br>Statement in Support of Petition for Cancellation.pdf ( 2 pages )(300877 bytes ) |
|-------------|---|

**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 | /s/                       |
| Name      | SCOTT MICHAEL MOORE, ESQ. |
| Date      | 03/29/2012                |

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INTERNATIONAL LEGAL MATTERS

WRITER: SCOTT MICHAEL MOORE

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LICENSED & ADMITTED

SUPREME COURT OF THE UNITED STATES OF AMERICA

U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

U.S. COURT OF INTERNATIONAL TRADE

OTHER U.S. FEDERAL COURTS

STATES OF NEW YORK & MICHIGAN ONLY

LONDON COURT OF INTERNATIONAL ARBITRATION

Via ESTTA

29 March 2012

United States Patent and Trademark Office  
Trademark Trial and Appeal Board

Re: Statement in Support of Petition for Cancellation  
Trademark Registration Number: 3883715  
Registration Date: 11/30/2010  
Serial Number: 77745471  
Filing Date: 5/27/2009  
Date of First Use: 6/29/2009  
Registrant: Reginald C. Barrett  
20 Laurel Hill Lane  
Amagansett, NY 11930

To the Board:

This firm represents Jonathan K. Smith, a member of the Shinnecock Indian Nation, on the Shinnecock Indian Reservation, the petitioner for cancellation of the above referenced registered design mark, and this letter is written as a statement in support of petitioner.

Petitioner seeks cancellation of the registration of 3883715 because 1) the design deceptively suggests the applicant is a Native American, and that the products are Native American made products, (Trademark Act, Section 2(a)), 2) the design falsely suggests a connection with Native America, (Trademark Act, Section 2(a)), 3) the design application was a fraud upon the Patent and Trademark Office, (*Torres v. Antine Torresella*, 808 F.2d 46 (Fed. Cir. 1986)), and petitioner has design mark priority and there is a likelihood of confusion of the designs, (Trademark Act, Section 2(d)).

Petitioner filed two trademark applications in or about 2006, seeking registration of the word marks SHINNECOCK BRAND FULL FLAVOR and SHINNECOCK BRAND LIGHTS,

with designs, (Serial Nos. 78/918,061 and 78/918,500 respectively). The applications were refused by the Examining Attorney under the Trademark Act, Section 2(a), on the basis that the words falsely suggested a connection with petitioners' tribe. The refusal was upheld by the Board, and by the United States Court of Appeals for the Federal Circuit, *In Re Shinnecock Smoke Shop*, 2009-1100 (July 1, 2009). The refusal was based on the words, not the design.

Reginald C. Barrett, was the applicant for, and is the registrant of, Trademark Registration Number 3883715. Mr. Barrett was a business associate of petitioner's, prior to, and in part, during, petitioner's applications of Serial Nos. 78/918,061 and 78/918,500. Petitioner and Mr. Barrett parted ways prior to the decision of the Federal Circuit in *In Re Shinnecock Smoke Shop*, on July 1, 2009, and after parting, Mr. Barrett went into competition against petitioner.

Petitioner has recently learned of Registration Number 3883715. The design in Registration Number 3883715, is petitioner's earlier filed design in Serial Nos. 78/918,061 and 78/918,500, with slight modification.

These facts show that Mr. Barrett fraudulently appropriated petitioner's design trademark, went into competition against petitioner, and filed for, and received registration for the same design mark, based upon fraudulent representations.

For these reasons, petitioner respectfully requests cancellation of Registration Number 3883715.

Very Truly Yours,

MOORE INTERNATIONAL LAW PLLC

BY: 

Scott Michael Moore  
Attorney at Law

Counsel for Jonathan K. Smith, Petitioner

**CERTIFICATION OF SERVICE**

The undersigned hereby certifies under penalty of perjury that Reginald C. Barrett was served with the Petition for Cancellation, and annexed papers, by postage-paid First Class Mail to the following address:

Reginald C. Barrett  
20 Laurel Hill Lane  
Amagansett, NY 11930

Dated: 8/24/12

  
Scott M. Moore, Esq.