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Filing date: **01/24/2013**

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	Christmas Tree Shops, Inc.		
Entity	Corporation	Citizenship	Massachusetts
Address	650 Liberty Avenue Union, NJ 07083 UNITED STATES		

Attorney information	Gregg A. Paradise Lerner, David, Littenberg, Krumholz & Mentlik, LLP 600 South Avenue West Westfield, NJ 07090 UNITED STATES gparadise@ldlkm.com,litigation@ldlkm.com Phone:9085186323		
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**Registration Subject to Cancellation**

Registration No	3326844	Registration date	10/30/2007
Registrant	R. DeNoble Enterprises Ltd. 641 Peacock Place Victoria, V9B6C3 CANADA		

**Goods/Services Subject to Cancellation**

Class 031. First Use: 1995/11/14 First Use In Commerce: 2007/06/13 All goods and services in the class are cancelled, namely: Cat food; Dog food
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**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	BBB petition for cancellation 3022251_1.pdf ( 6 pages )(27343 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	/Gregg A. Paradise/
Name	Gregg A. Paradise

Date	01/24/2013
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CHRISTMAS TREE SHOPS, INC., :  
: Registration No. 3,326,844  
Petitioner, :  
: :  
v. : Mark: HAPPY PAWS and Design  
: :  
R. DENOBLE ENTERPRISES LTD., :  
: Cancellation No. \_\_\_\_\_  
Respondent. :  
\_\_\_\_\_X

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**PETITION FOR CANCELLATION**

Petitioner CHRISTMAS TREE SHOPS, INC. ("Petitioner"), requests cancellation of the above-identified registration. The basis for cancellation is set forth below.

1. Petitioner is a Massachusetts corporation with a business address of 650 Liberty Avenue, Union, New Jersey 07083.

2. Upon information and belief, Registrant R. DENOBLE ENTERPRISES LTD. ("Respondent"), is a Canadian corporation with a business address of 641 Peacock Place, Victoria, Canada V9B6C3.

3. Upon information and belief, Respondent is the owner of U.S. Trademark Registration No. 3,326,844 ("the Registration").

4. Petitioner is the owner of Trademark Application No. 85/424,332 ("the Application") for the mark HAPPY PAWS. Petitioner's Application currently lists the goods as

"Collars for pets; leashes for animals; pet clothing" in Class 18; "Beds for household pets; pillows for household pets" in Class 20; "Pet feeding and drinking bowls; grooming tools for pets, namely, combs and brushes" in Class 21; "Pet blankets; towels for cleaning pets; pet washing mitts" in Class 24; and "Toys for domestic pets" in Class 28.

5. A Final Action in connection with Petitioner's Application is pending and was mailed on July 24, 2012. That Final Action refuses registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d) in view of Respondent's Registration.

6. The application that matured into Respondent's Registration was filed on November 16, 2005 on the basis of an intent to use the HAPPY PAWS and Design mark in connection with "Cat food; Dog food" in Class 31. Respondent's Registration for the HAPPY PAWS and Design mark registered on October 30, 2007.

7. Respondent's website (<http://www.happypaws.ca/locations.html>) states that:

Happy Paws pet food is currently sold in stores on Vancouver Island, Saltspring Island, Sunshine Coast, the Lower Mainland of British Columbia and now Alberta.

\*Happy Paws is also trademarked & ready for US market - distributors please contact us for more info on prices etc.

8. Upon information and belief, Respondent is not presently, and has never, sold any pet food products in the United States.

**COUNT I**  
**(Abandonment)**

9. Petitioner repeats and incorporates the preceding allegations in paragraphs 1-8 as if each were fully set forth herein.

10. Upon information and belief, Respondent has not used the HAPPY PAWS and Design mark in connection with the goods listed in Respondent's Registration for at least the past three years, and thus Respondent has ceased use of the mark and is presumed to not have an intent to resume use.

11. Through Respondent's failure to use the HAPPY PAWS and Design mark in connection with the goods listed in Respondent's Registration, Respondent abandoned all rights in and to the Registration.

12. In view of the Trademark Attorney's refusal to register Petitioner's mark in Petitioner's Application pursuant 15 U.S.C. § 1052(d), Petitioner will be damaged by the continued existence of Trademark Registration No. 3,326,844.

13. Therefore, Petitioner asserts that Respondent's Registration for HAPPY PAWS and Design should be cancelled pursuant to 15 U.S.C. § 1119 due to abandonment.

**COUNT II**  
**(Fraud)**

14. Petitioner repeats and incorporates the preceding allegations in paragraphs 1-13 as if each were fully set forth herein.

15. Upon information and belief, at no time did Respondent ever use the HAPPY PAWS and Design mark in connection with any of the goods listed in Respondent's Registration.

16. On June 19, 2007 Respondent filed a Statement of Use in which it alleged that it was presently "using the [HAPPY PAWS and Design] mark in commerce on or in connection with all goods and/or services listed in the application or Notice of Allowance."

17. Upon information and belief, despite knowing that it was not actually using the HAPPY PAWS and Design mark in commerce in the United States, Respondent filed the Statement of Use.

18. Upon information and belief, Respondent knowingly made a false, material representation with the intent to deceive the Trademark Office when it filed the Statement of Use.

19. Based upon the material misrepresentation to the Trademark Office through the filing of the Statement of Use that Respondent was using the HAPPY PAWS and Design mark in connection with the goods and services listed in the registration, Petitioner asserts that Respondent's Registration should be cancelled due to fraud pursuant to 15 U.S.C. § 1064(3).

20. Further, upon information and belief, despite knowing that it was not actually using the HAPPY PAWS and Design mark in commerce in the United States, Respondent filed a Section 8 declaration on November 5, 2012 in connection with Respondent's Registration in which it falsely stated that "the [HAPPY PAWS and Design] mark is in use in commerce on or in connection with **all** goods or services listed in the existing registration." (Emphasis in original.)

21. Upon information and belief, Respondent knowingly made a false, material representation with the intent to deceive the Trademark Office when it filed the Section 8 declaration.

22. Based upon the material misrepresentation to the Trademark Office through the filing of the Section 8 declaration that Respondent was using its Registration in connection with the goods listed in the Registration, Petitioner asserts that Respondent's Registration should be cancelled due to fraud pursuant to 15 U.S.C. § 1064(3).



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Petition for Cancellation was served on January 24, 2013, via first-class mail, postage prepaid, on Respondent, addressed as follows:

R. Denoble Enterprises Ltd.  
641 Peacock Place  
Victoria V9B6C3  
CANADA

/Gregg A. Paradise/  
Gregg A. Paradise