

ESTTA Tracking number: **ESTTA537257**

Filing date: **05/10/2013**

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	Petland, Inc.		
Entity	Corporation	Citizenship	Ohio
Address	PO Box 1606 250 Riverside Drive Chillicothe, OH 45601 UNITED STATES		

Attorney information	Robert G. Schuler Kegler Brown Hill & Ritter Co., LPA 65 East State Street, Suite 1800 Columbus, OH 43215 UNITED STATES trademarks@keglerbrown.com,rschuler@keglerbrown.com,jnein@keglerbrown.com Phone:(614) 462-5400
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Registration Subject to Cancellation

Registration No	3683537	Registration date	09/15/2009
Registrant	THE LIFE IS GOOD COMPANY 283 NEWBURY STREET BOSTON, MA 02108 UNITED STATES		

Goods/Services Subject to Cancellation

Class 018. First Use: 2009/01/01 First Use In Commerce: 2009/01/01 All goods and services in the class are cancelled, namely: dog collars, dog leashes
Class 020. First Use: 2009/01/01 First Use In Commerce: 2009/01/01 All goods and services in the class are cancelled, namely: dog beds
Class 021. First Use: 2009/01/01 First Use In Commerce: 2009/01/01 All goods and services in the class are cancelled, namely: pet bowls for eating and drinking
Class 028. First Use: 2009/01/01 First Use In Commerce: 2009/01/01 All goods and services in the class are cancelled, namely: pet toys

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.	1929173	Application Date	02/28/1994
Registration Date	10/24/1995	Foreign Priority	NONE

		Date	
Word Mark	GOOD DOG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1994/02/01 First Use In Commerce: 1994/02/01 toys for animals		

U.S. Registration No.	3640078	Application Date	11/21/2006
Registration Date	06/16/2009	Foreign Priority Date	NONE
Word Mark	GOOD DOG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2007/11/00 First Use In Commerce: 2007/11/00 Feed supplements for pets		

U.S. Registration No.	3904569	Application Date	11/21/2006
Registration Date	01/11/2011	Foreign Priority Date	NONE
Word Mark	GOOD DOG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2007/11/15 First Use In Commerce: 2007/11/15 Pet accessories, namely, canvas, vinyl and leather pouches for holding disposable bags to place pet waste in		

U.S. Registration No.	3640079	Application Date	11/21/2006
Registration Date	06/16/2009	Foreign Priority Date	NONE
Word Mark	GOOD DOG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2007/09/00 First Use In Commerce: 2007/11/00 Feeding vessels for pets		

U.S. Application No.	77196945	Application Date	06/04/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GOOD DOG		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 031. First use: Pet chews

Attachments	petition to cancel_good dog by life is good.pdf (1 page)(21443 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	/Robert G. Schuler/
Name	Robert G. Schuler
Date	05/10/2013

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

In the Matter of Registration Number 3,683,537
For: GOOD DOG BY LIFE IS GOOD
Registered on September 15, 2009

PETLAND, INC.)	
)	
Petitioner,)	
)	
v.)	Cancellation Number _____
)	
THE LIFE IS GOOD COMPANY)	
)	
Registrant.)	
)	

Commissioner for Trademarks
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

PETITION TO CANCEL

Petland, Inc., an Ohio corporation, with a business address of P.O. Box 1606, 250 Riverside Street, Chillicothe, Ohio 45601, believes that it is being damaged by U.S. Registration No. 3, 683,537 for GOOD DOG BY LIFE IS GOOD held in the name of The Life Is Good Company, and hereby petitions to cancel the registration of such mark on the following grounds:

PARTIES

1. On information and belief, Registrant, The Life Is Good Company (hereinafter “Life Is Good”), is a Massachusetts corporation with its principal place of business at 283 Newbury Street, Boston, Massachusetts 02108.

2. Petitioner, Petland, Inc. (hereinafter “Petland”), is an Ohio corporation with a business address of P.O. Box 1606, 250 Riverside Street, Chillicothe, Ohio 45601.

GROUND FOR CANCELLATION AND STANDING

3. Petland is the owner of U.S. Registration No. 1,929,173 for GOOD DOG (and Design), which registered on the Principal Register on October 24, 1995. The registration is in Class 028 for “toys for animals.” The Registration was renewed on January 13, 2006, and is in good standing.
4. On November 21, 2006, Petland filed three intent-to-use trademark applications for the mark GOOD DOG in the U.S. Patent and Trademark Office under Section 1(b), application no.’s 77/048,382 (Standard Character Mark) in Class 5, in part for “Feed supplements for pets,” 77/048,383 (Standard Character Mark) in Class 18, in part for “Pet accessories, namely, canvas, vinyl and leather pouches for holding disposable bags to place pet waste in,” and 77/048,385 (Standard Character Mark) in Class 21, in part for “Feeding vessels for pets.”
5. Registration No. 3,640,078 issued June 16, 2009, for the mark GOOD DOG, in Class 5, for “Feed supplements for pets,” Registration No. 3,904,569 issued January 11, 2011, for the mark GOOD DOG, in Class 18, for “Pet accessories, namely, canvas, vinyl and leather pouches for holding disposable bags to place pet waste in,” and Registration No. 3,640,079 issued June 16, 2009, for the mark GOOD DOG, in Class 21, for “Feeding vessels for pets.” All three registrations have a filing date of November 21, 2006.

6. On information and belief, on February 1, 2007, Life Is Good filed an intent-to-use trademark application for the mark GOOD DOG BY LIFE IS GOOD in the U.S. Patent and Trademark Office under Section 1(b), application no. 77/096,998 (Standard Character Mark), which was later amended to be included in Class 18, for “dog collars, dog leashes,” Class 20, for “dog beds,” Class 21, for “pet bowls for eating and drinking,” and Class 28, for “pet toys.”
7. Despite Petland’s GOOD DOG (and Design) Registration No. 1,929,173 and prior pending application no.’s 77/048,382, 77/048,383, and 77/048,385, all of which were cited against Life Is Good’s original application no. 77/096,998 as possible conflicting marks due to a likelihood of confusion under Section 2(d) of the Trademark Act, Registration No. 3,683,537 issued September 15, 2009, for the mark GOOD DOG BY LIFE IS GOOD, in Class 18, for “dog collars, dog leashes,” Class 20, for “dog beds,” Class 21, for “pet bowls for eating and drinking,” and Class 28, for “pet toys,” claiming the first use date of January 1, 2009 for each Class.
8. Although federal trademark Registration No. 3,683,537 for the word mark “GOOD DOG BY LIFE IS GOOD” issued September 15, 2009, it may be cancelled within five years from the date of the mark’s registration by any person who believes that he is or will be damaged by such registration, pursuant to Section 14(1) of the Lanham Act, 15 U.S.C. §1064(1).
9. On June 4, 2007, Petland filed a trademark application for the mark GOOD DOG in the U.S. Patent and Trademark Office under Section 1(b), application no. 77/196,945 (Standard Character Mark) in Class 31, for “Pet chews.”

10. Despite the history between Petland's abovementioned marks and Life Is Good's abovementioned mark—specifically, that the Life Is Good mark for GOOD DOG BY LIFE IS GOOD was found not to be confusingly similar to Petland's marks for GOOD DOG on identical goods, and was granted registration on the principal register—on January 31, 2011, the examining attorney assigned to Petland's application no. 77/196,945 issued an office action refusing registration based on likelihood of confusion under Section 2(d) of the Lanham Act, citing Life Is Good's Registration No. 3,683,537 against Petland's application no. 77/196,945.
11. Because of the refusal to register Petland's Application Serial No. 77/196,945 for the mark GOOD DOG, Petland is being damaged by the continued registration of Life Is Good's mark GOOD DOG BY LIFE IS GOOD.
12. To the extent that there is a likelihood of confusion between Petland's GOOD DOG mark set forth in Application Serial No. 77/196,945 and Life Is Good's GOOD DOG BY LIFE IS GOOD mark set forth in Registration No. 3,683,537, then there is necessarily a likelihood of confusion between Life Is Good's GOOD DOG BY LIFE IS GOOD mark set forth in Registration No. 3,683,537 and Petland's GOOD DOG marks set forth in Registration No. 1,929,173; Registration No. 3,640,078; Registration No. 3,904,569; and Registration No. 3,640,079.
13. Because Petland's registered marks for GOOD DOG have a priority date earlier in time than Life Is Good's GOOD DOG BY LIFE IS GOOD registered mark, Life Is Good's GOOD DOG BY LIFE IS GOOD registered mark is subject to cancellation.

PRAYER FOR RELIEF

WHEREFORE, Petland has been, and continues to be, damaged and harmed by the continued registration of Registrant's mark GOOD DOG BY LIFE IS GOOD, and respectfully prays that this Petition be sustained and that Registration No. 3,683,537 be cancelled.

In accordance with 37 C.F.R. § 2.6(a)(16), the governmental filing fee of \$300.00 has been submitted herewith, and any additional fees in connection herewith are hereby authorized to be drawn from Deposit Account No. 050960 of Kegler Brown Hill & Ritter Co., LPA.

Respectfully Submitted,

/Robert G. Schuler/
Robert G. Schuler (0039258)
Stephen C. Barsotti (0075038)
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Telephone: (614) 462-5400
trademarks@keglerbrown.com

Date: May 10, 2013

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PETITION TO CANCEL** was served today by electronic mail to tom@piercemandell.com, and by first class, postage prepaid mail on:

Attn: Thomas E. Kenney
Pierce & Mandell, P.C.
11 Beacon St., STE 800
Boston, Massachusetts 02108-3037

Dated: May 10, 2013

/Robert G. Schuler/

Robert G. Schuler

CERTIFICATE OF TRANSMITTAL

I hereby certify that this **PETITION TO CANCEL** is being electronically filed through the ESTTA System on the United States Patent and Trademark Office website on May 10, 2013.

/Phyllis-J. Frashier/

Phyllis-J. Frashier
Intellectual Property Paralegal