

ESTTA Tracking number: **ESTTA541742**

Filing date: **06/05/2013**

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	On Doody Pet Waste Removal Service LLC		
Entity	Limited Liability Company	Citizenship	Tennessee
Address	1634 Dexter Woods Drive Cordova, TN 38016 UNITED STATES		

Attorney information	Amy Allen Hinson Nexsen Pruet, LLC PO Box 10648 Greenville, SC 29603 UNITED STATES aahinson@nexsenpruet.com, kstearing@nexsenpruet.com, jhardaway@nexsenpruet.com Phone:864-282-1168
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Registration Subject to Cancellation

Registration No	3970086	Registration date	05/31/2011
Registrant	Kelly-Vargas, Kirsten L 19202 Janet Avenue Lockport, IL 60446 UNITED STATES		

Goods/Services Subject to Cancellation

Class 037. First Use: 2000/03/01 First Use In Commerce: 2000/03/01 All goods and services in the class are cancelled, namely: Pet waste removal services

Grounds for Cancellation

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)
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)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85770229	Application Date	11/02/2012
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	ON DOODY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1999/11/01 First Use In Commerce: 1999/11/01 Pet waste removal services		

Attachments	3970086 Cancellation.PDF(42110 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	/Amy Allen Hinson/
Name	Amy Allen Hinson
Date	06/05/2013

Mark: ON DOODY
Reg. No.: 3970086
Services: Pet waste removal services, in International Class 037
Registered: May 31, 2011
Filing Date: October 1, 2010
Alleged Date of first use: March 1, 2000

2. Petitioner uses the following mark (hereinafter "Petitioner's Mark") and is the owner of the following pending application (hereinafter the "Application"):

Mark: ON DOODY
Serial No.: 85/770229
Services: Pet waste removal services, in International Class 037
Filing Date: November 2, 2012
Date of first use: November 1, 1999

3. The Application for Petitioner's Mark stands rejected on the basis of a likelihood of confusion with Registrant's Mark set forth in the Registration.

4. Petitioner's services as identified above are closely related to Registrant's services, which Registrant alleges to be offering in connection with the mark ON DOODY.

5. Further, Petitioner's Mark and Registrant's Mark are confusingly similar when used in connection with the respective services of the parties.

6. Petitioner's dates of first use anywhere and in commerce of its Mark long predate Registrant's filing date and its alleged date of first use. The Registration should therefore be cancelled under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

7. Further, Registrant's alleged use of the mark ON DOODY falsely suggests a connection with Petitioner based on the similarity with Petitioner's Mark. Registrant's services are at least related to the services offered under Petitioner's Mark, and, therefore, Registrant's Mark will likely cause the relevant purchasing public to erroneously assume and be confused, misled, or deceived that Registrant's services

are provided by, licensed by, controlled by, sponsored by, or in some way related to or associated with Petitioner, all to Petitioner's irreparable damage. The Registration should therefore further be cancelled under Section 2(a) of the Lanham Act, 15 U.S.C. §1052(a).

8. Upon information and belief, Registrant was exposed to Petitioner's Mark in commerce prior to filing the application for registration at issue. The Registration should be denied as Registrant is not (and was not, at the time of the filing of its application for registration) the rightful owner of the mark at issue.

9. Upon information and belief, Registrant has committed fraud in procuring a trademark registration through knowingly making false material representations of fact with the intent to deceive in connection with the Registration, in that

- a. Petitioner did in fact use its Mark, which is confusingly similar to Registrant's Mark, at the time Registrant submitted its October 1, 2010 application;
- b. Petitioner has superior legal rights to Registrant;
- c. Registrant knew that Petitioner had superior rights and believed that a likelihood of confusion would result from Registrant's use of its Mark or had no reasonable basis for believing otherwise;
and
- d. Registrant, in failing to disclose Petitioner's Mark, intended to procure a registration to which it is not entitled.

10. Since Petitioner owns its Mark by virtue of prior use, mistake or deception as to the source of origin of the services will likely arise and will injure and damage the Petitioner and its goodwill.

11. In view of Petitioner's prior use of its Mark, as well as the harm to Petitioner and the relevant purchasing public, Registrant is not entitled to maintain the registration of the mark ON DOODY.

WHEREFORE, Petitioner requests that Registration No. 3970086 be cancelled and that this Cancellation be sustained in favor of Petitioner. The required cancellation fee is submitted herewith.

Respectfully submitted,



Amy Allen Hinson
USPTO Reg. No. 61,418
John B. Hardaway, III
USPTO Reg. No. 26,554
Nexsen Pruet, LLC
Post Office Drawer 10648
Greenville, SC 29603
Tel: (864) 282-1168
Fax: (864) 282-2601
aahinson@nexsenpruet.com
jhardaway@nexsenpruet.com

Attorneys for Petitioner,
On Doody Pet Waste Removal Services LLC

Dated: June 5, 2013

CERTIFICATE OF SERVICE

I hereby certify that pursuant to 37 C.F.R. §2.119, a true and correct copy of Petitioner's Petition for Cancellation re: *On Doody Pet Waste Removal Services LLC v. Kirsten L. Kelly-Vargas, D/B/A On Doody* was forwarded by first class, postage prepaid mail by depositing the same with the U.S. Postal Service and by electronic mail on this 5th day of June, 2013, to the correspondent of record for the Registrant at the following address:

MS. KIRSTEN L. KELLY-VARGAS
19202 JANET AVE
LOCKPORT, ILLINOIS 60446-9552

I declare under penalty of perjury of the United States of America that the foregoing is true and correct.



Amy Allen Hinson
Nexsen Pruet, LLC
55 E. Camperdown Way, Suite 400
Greenville, South Carolina 29601
(864) 282-1168
aahinson@nexsenpruet.com

Dated: June 5, 2013
Greenville, South Carolina