

ESTTA Tracking number: **ESTTA545502**

Filing date: **06/27/2013**

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	A to U Services, Inc.		
Entity	Corporation	Citizenship	Pennsylvania
Address	52 Ridgeway Avenue Glenolden, PA 19036 UNITED STATES		

Correspondence information	Lesley M. Grossberg Woodcock Washburn LLP Cira Centre 12th Floor 2929 Arch St. Philadelphia, PA 19104 UNITED STATES lgrossberg@woodcock.com, nfrandsen@woodcock.com, trademarks@woodcock.com Phone:215-564-3007
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Registration Subject to Cancellation

Registration No	4251607	Registration date	11/27/2012
Registrant	Precision Sewer Services LLC 1527 Huddell Ave Linwood, PA 19061 UNITED STATES		

Goods/Services Subject to Cancellation

Class 037. First Use: 2012/03/01 First Use In Commerce: 2012/03/01 All goods and services in the class are cancelled, namely: Drain and sewer cleaning and rooting services
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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)
Priority and likelihood of confusion	Trademark Act section 2(d)

Related Proceedings	Civil Action No. 2:13-2916-LDD, Precision Sewer Services, LLC v. A to U Services, Inc., et al. (Eastern District of Pennsylvania, filed May 28, 2013)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Design Mark	
Goods/Services	Drain and sewer cleaning and rooting services

Attachments	Petition to Cancel - A to U Services.pdf(200821 bytes) Sewer Service design mark for filing.jpg
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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	/lesley m. grossberg/
Name	Lesley M. Grossberg
Date	06/27/2013

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

In the matter of Trademark Registration No. 4,251,607
For the Mark: PRECISION SEWER SERVICES
Registered on November 27, 2012

A to U Services, Inc.,
d/b/a A to U Sewer Service,

Petitioner,

v.

Precision Sewer Services,

Registrant.

Cancellation No.

PETITION FOR CANCELLATION

Petitioner, A to U Service, Inc., d/b/a A to U Sewer Services, a Pennsylvania corporation having its principal place of business at 52 Ridgeway Avenue, Glenolden, PA 19036, believes that it is, or will be, damaged by Registration No. 4,251,607 for the mark PRECISION SEWER SERVICES, registered on the Principal Register on November 27, 2012 for drain and sewer cleaning and rooting services, consisting of “a black and white image of a male worker kneeling on his right knee and operating a machine to clean a sewer, the word ‘PRECISION’ outlined in white with blue striping in each letter written on the inside of a blue arrow that forms a 180 degree arch and travels clockwise around the image of the worker with the head of the arrow facing downward, the words ‘SEWER SERVICES’ outlined in white with red striping in each letter written on the inside of a red arrow that forms a 180 degree arch and travels clockwise

around the image of the worker with the head of the arrow facing upwards,” and hereby petitions for cancellation of same.

As grounds for cancellation, it is alleged that:

1. Petitioner is a Pennsylvania corporation, having its principal place of business at 52 Ridgeway Avenue, Glenolden, PA 19036.
2. Petitioner is a contractor offering sewer and drain cleaning services and rooting services.
3. Beginning in September 2011, Petitioner began using the following identifying design mark (the “Sewer Service Design Mark”) on its trucks and daily work orders:



4. Petitioner currently uses a version of the Sewer Service Design Mark that retains the picture of a man cleaning a sewer (the “logo design component”), a blue circular border extended around the logo design component, and the words “A to U” inside the top half of the circle and the words “Sewer Service” inside the bottom half of the circle, as shown below:



5. Upon information and belief, Registrant is a Pennsylvania Limited Liability Company, having its principal place of business at 1527 Huddell Avenue, Linwood, PA.
6. Upon information and belief, Registrant was formed on or about October 24, 2011.
7. Registrant is the owner of United States Trademark Registration No. 4,251,607, issued November 27, 2012, for the mark PRECISION SEWER SERVICES, alleging a date of first use of March 1, 2012, and a date of first use in commerce of March 1, 2012, for drain and sewer cleaning and rooting services, in International Class 37, which claims the following design, including colors, as shown below:



8. United States Trademark Registration No. 4,251,607 disclaims any exclusive right to use the term “Sewer Services” apart from the mark as shown.
9. Petitioner is and has been engaged throughout the mid-Atlantic United States in continuous interstate trade, advertising, and rendering of services using its Sewer Service Design Mark since at least September 2011 to the present, prior to Registrant’s existence and prior to Registrant’s claimed first use date of March 1, 2012.
10. Petitioner’s goods and services rendered under its Sewer Service Design Mark have been continuously offered to the public since September 2011. Petitioner has advertised its services and created widespread goodwill under its mark to the point where the public has come to recognize and associate the Sewer Service design mark with the Petitioner and Petitioner’s services.
11. The logo design component of the man performing sewer work, which is identical in both Petitioner’s Sewer Service Design Mark and Registrant’s mark, is inherently distinctive and recognizable as an indicator of Petitioner’s sewer and drain cleaning services.
12. Registrant’s trademark application fraudulently claimed that no other person, firm, corporation, or association ha[d] the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive, when in fact

Registrant was aware that Petitioner had been using its Sewer Service Design Mark in September 2011.

13. Petitioner has priority of use of its Sewer Service Design Mark by virtue of having used its mark since September 2011, while Registrant claims a first use date for its infringing mark of March 1, 2012.
14. Registrant's registered mark infringes upon Petitioner's common law rights in Petitioner's Sewer Service Design Mark.
15. United States Trademark Registration No. 4,251,607 should not have been registered because the design so resembles Petitioner's Sewer Service Design Mark as to cause confusion with Petitioner's Sewer Service Design Mark for the same services offered by Registrant.
16. Registrant, being a junior user of a mark highly similar to Petitioner's Sewer Service Design Mark, had no basis to assert pursuant to Sections 1(a)(3)(D) and 2(d) of the Trademark Act that no other person had the right to use the mark or to disclaim concurrent use.
17. Registrant's mark is confusingly similar to Petitioner's Sewer Service Design Mark, and the registration and use by Registrant of the mark on services that are virtually identical to Petitioner's services and within the same channels of trade, is likely to cause and has caused confusion, deception, diversion of business, damage to goodwill, loss of control over reputation and mistake, all to Petitioner's damage unless the Registrant's trademark registration is canceled.

18. The continued existence of Registration No. 4,251,607 creates a likelihood of confusion with Petitioner's common law trademark by misleading the public into believing that Registrant is affiliated with Petitioner and/or as to the source or origin of the goods and services offered.

WHEREFORE, Petitioner, A to U Services, Inc. prays that its petition is granted and that Registration No. 4,251,607 is cancelled.

Dated: June 27, 2013

Respectfully submitted,



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Certificate of Service

I hereby certify that a copy of the foregoing paper was served by first-class mail, postage prepaid, upon the Registrant, Precision Sewer Services, 1527 Huddell Avenue, Linwood, PA 19061, this 27th day of June, 2013.

A handwritten signature in black ink that reads "Lesley M. Grossberg". The signature is written in a cursive style with a large initial 'L' and 'G'.

Lesley M. Grossberg