

ESTTA Tracking number: **ESTTA550841**

Filing date: **07/27/2013**

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	PANE DELLA VITA II, INC.		
Entity	Corporation	Citizenship	California
Address	8835 N Cedar Ave Fresno, CA 93720 UNITED STATES		

Attorney information	Roberto C. Rondero de Mosier 112 E. Pecan St., Suite 1000 San Antonio, TX 78205 UNITED STATES rc@gonzalezmosier.com Phone:(512) 394-3564		
----------------------	--	--	--

Registration Subject to Cancellation

Registration No	3689233	Registration date	09/29/2009
Registrant	Batter Up, LLC 315 High Street Chestertown, MD 21620 UNITED STATES		

Goods/Services Subject to Cancellation

Class 043. First Use: 2009/02/04 First Use In Commerce: 2009/02/04 All goods and services in the class are cancelled, namely: Restaurant and carry out food services

Grounds for Cancellation

Abandonment	Trademark Act section 14
-------------	--------------------------

Attachments	Cancellation Petition.pdf(119311 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/Roberto C. Rondero de Mosier/
Name	Roberto C. Rondero de Mosier
Date	07/27/2013

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

In the matter of trademark Registration No. 3689233

For the mark: Batter Up

Date registered: September 29, 2009

PANE DELLA VITA II, INC.

Petitioner

v.

BATTER UP, LLC

Registrant

PETITION TO CANCEL

COMES NOW PANE DELLA VITA II, INC. dba BATTER UP PANCAKES, located at 8835 N. Cedar Ave., Fresno, CA 93720.

To the best of petitioner's knowledge, the name and address of the current owner of the registration at issue is: BATTER UP, LLC, 830 High Street, Chestertown, MD, 21620.

The above-identified petitioner believes that it will be damaged by the above-identified registration, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

I.

FACTS

1) Owner of the registered mark, Batter Up LLC, filed a trademark application March 16, 2009. The application was subsequently published for opposition July 14, 2009. The official registration date was September 29, 2009. The trademark registration shows use of the mark for restaurant and carry out food services. The specimen used for filing is a menu for Batter Up Grand Slam Dining.

2) An Internet search for Batter Up Grand Slam Dining shows a restaurant location of 1104 Price Station Rd., Church Hill, MD 21623. Additional searches show that as early as November of 2011, the restaurant was reported as closed. Currently the space is occupied by Verna's Korner Country Kitchen, a restaurant. On July 2, 2013, Petitioner hired an investigator to interview residents of Church Hill, MD to assess the existence of Batter Up Grand Slam Dining. The current business in the former restaurant's space, attested to fact Batter Up Grand Slam Dining went out of business.

3) A search of the Maryland State Department of Assessments and Taxation shows that as of October 3, 2011, the charter to operate Batter Up, LLC was revoked.

II.

CLAIMS

A.

ABANDONMENT

1) A mark is abandoned when its trademark use (*i.e.*, use in the ordinary course of trade) has been discontinued with the "intent not to resume such [trademark] use". 15 U.S.C. § 1127. Intent not to resume may be inferred from circumstances. 15 U.S.C. § 1127.

2) Here, Batter Up, LLC, record owner of Batter Up Grand Slam Dining has not used the mark in the ordinary course of trade as early as November 2011, if not earlier. The mark is currently not in use.

3) Batter Up LLC, has not been in existence since, at least October 3, 2011. Non-use of the name by the legal owner and no intent by that person or entity to resume use in the reasonably foreseeable future can show abandonment. *Stetson v. Howard D. Wolf & Assocs.*, 955 F.2d 847, 850 (2d Cir.1992). Here, the legal owner of the mark is no longer in existence, demonstrating that there is no intent to resume use.

III.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Registration number

3689233 be cancelled pursuant to 15 U.S.C. § 1064 because the mark has been abandoned by Registrant.

Respectfully submitted, July 27, 2013, by:



Roberto C. Rondero de Mosier
TX State Bar No. 24051964
112 E. Pecan St., Suite 1000
San Antonio, TX 78205
(512) 394-3564 (Office)
rc@gonzalezmosier.com