

ESTTA Tracking number: **ESTTA555785**

Filing date: **08/23/2013**

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	Burning Glass International, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1 Faneuil Hall Market, 4th Floor Boston, MA 02109 UNITED STATES		

Attorney information	Andrew N. Spivak Mosaic Legal Group, PLLC 5185 MacArthur Boulevard, NW, Suite 350 Washington, DC 20016-3341 UNITED STATES aspivak@mosaiclegalgroup.com Phone:(202) 600-2270
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**Registration Subject to Cancellation**

Registration No	3032738	Registration date	12/20/2005
Registrant	Ratchye, Ellen Cunningham 817 Chicago Avenue Apt. 2 Evanston, IL 60202 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 035. First Use: 2004/04/08 First Use In Commerce: 2004/04/08 All goods and services in the class are cancelled, namely: Providing business consulting services to businesses to keep them aware of emergent trends in culture
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**Grounds for Cancellation**

False suggestion of a connection	Trademark Act section 2(a)
Abandonment	Trademark Act section 14
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

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	85758815	Application Date	10/19/2012
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	BURNING GLASS
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 2003/07/31 First Use In Commerce: 2003/07/31  Computer software and temporary downloadable software to do research and analytics in the areas of recruitment, resumes, job searching, employment, recruiting, job retention and the labor market</p> <p>Class 035. First use: First Use: 2003/07/31 First Use In Commerce: 2003/07/31  Database management in the field of recruitment, resumes, job searching, employment, recruiting, job retention and the labor market; Analytics and research services in the area of recruitment, resumes, job searching, employment, recruiting, job retention and the labor market; Business consulting services, namely, specializing in the use of analytic and statistic models for the understanding and predicting of recruiting, job searching, employment, job retention and the labor market</p>

Attachments	BURNING GLASS - Petition for Cancellation.pdf(735028 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	/Andrew N. Spivak/
Name	Andrew N. Spivak
Date	08/23/2013

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

Burning Glass International Inc.,	)	
	)	
Petitioner,	)	Cancellation No. _____
vs.	)	
	)	
Ellen Cunningham Ratchye,	)	Mark: BURNING GLASS
	)	Registration No.: 3,032,738
Respondent.	)	Registration Date: December 20, 2005
	)	
_____	)	

PETITION FOR CANCELLATION

Petitioner Burning Glass International Inc., a Delaware corporation (“Petitioner”) having an address of 1 Faneuil Hall Market, 4<sup>th</sup> Floor, Boston, Massachusetts 02109, believes that it is and will remain damaged by the continued registration of U.S. Trademark Registration No. 3,032,738 owned by Ellen Cunningham Ratchye (“Respondent”), and hereby petitions for cancellation of said registration.

COUNT I – ABANDONMENT

1. Petitioner is the owner of pending U.S. Trademark Application Serial No. 85/758,815 for the mark BURNING GLASS in connection with “Computer software and temporary downloadable software to do research and analytics in the areas of recruitment, resumes, job searching, employment, recruiting, job retention and the labor market,” in International Class 9, and also “Database management in the field of recruitment, resumes, job searching, employment, recruiting, job retention and the labor market; Analytics and research

services in the area of recruitment, resumes, job searching, employment, recruiting, job retention and the labor market; Business consulting services, namely, specializing in the use of analytic and statistic models for the understanding and predicting of recruiting, job searching, employment, job retention and the labor market,” in International Class 35.

2. Although the aforesaid application was filed based on Petitioner’s actual and current use of its BURNING GLASS trademark in commerce in both classes of goods and services since at least as early as July 31, 2003, Petitioner’s true date of first use of the mark in commerce, through its predecessor-in-interest, was at least as early as October 27, 1999.

3. On information and belief, Respondent is an individual United States citizen with an address of 817 Chicago Avenue, Apt. 2, Evanston, Illinois 60202.

4. On information and belief, Respondent owns U.S. Trademark Registration No. 3,032,738 for the trademark BURNING GLASS for “Providing business consulting services to businesses to keep them aware of emergent trends in culture.”

5. According to the prosecution history of the aforesaid registration, Respondent initially began use of her BURNING GLASS service mark in commerce on April 8, 2004, with a constructive date of first use in commerce of September 1, 2001, the filing date of the intent-to-use application resulting in Respondent’s registration.

6. At this time, any residual and current use in commerce of the term “Burning Glass” by Respondent is as a trade name only and not as a source identifier for Respondent’s services.

7. Respondent has thus abandoned use of the mark BURNING GLASS as a source identifier in the United States.

COUNT II – LIKELIHOOD OF CONFUSION WITH PRIOR MARK

8. Petitioner hereby incorporates Counts 1-7 above into this Count II.

9. Applicant's date of first use of its mark in commerce through its predecessor-in-interest, October 27, 1999, precedes Respondent's constructive date of first use of her mark in commerce, September 1, 2001.

10. Applicant's aforesaid application was refused registration based upon a likelihood of confusion with Respondent's aforesaid registration.

11. If, as alleged by the Trademark Examining Attorney in the prosecution of Applicant's aforesaid application, Applicant's use of its mark and Respondent's since-abandoned use of her mark are likely to cause consumer confusion under 15 U.S.C. §1052(d), the junior user should not be capable of maintaining a registration for the junior mark.

12. Here, the junior mark belongs to Respondent. As such, Respondent's registration should be cancelled based on Applicant's prior use of the same mark.

COUNT III – FALSE SUGGESTION OF A CONNECTION

13. Petitioner hereby incorporates Counts 1-12 above into this Count III.

14. In addition to Respondent's since-abandoned but junior use of her BURNING GLASS service mark in commerce, such previous use falsely suggests a connection with Applicant's juristic person in violation of 15 U.S.C. §1052(a).

15. This false connection arises from the identical physical nature of the marks, Applicant's prior source-identifying use of the identical mark, and Applicant's additional use of the mark within its own trade name.

16. As such, Respondent's registration should be cancelled based upon the false suggestion of a connection with Applicant's juristic person created by Respondent's since-abandoned but junior use of the identical mark.

COUNT IV – MISREPRESENTATION AS TO SOURCE OF GOODS

17. Petitioner hereby incorporates Counts 1-16 above into this Count IV.

18. In addition to Respondent's since-abandoned junior use of her BURNING GLASS service mark in commerce, and the false suggestion of a connection with Applicant's juristic person in violation of 15 U.S.C. §1052(a), Respondent's since-abandoned use of her BURNING GLASS mark also amounted to a misrepresentation as to the source of her services in violation of 15 U.S.C. §1064(3).

19. This misrepresentation as to the source of her services arises from the identical physical nature of the marks, Applicant's prior source-identifying use of the identical mark, and Applicant's additional use of the mark within its own trade name.

20. If Respondent is granted continued registration of her claimed BURNING GLASS service mark as shown in the above-referenced registration, Respondent will continue to be granted the *prima facie* exclusive right to reinstate use of such mark in the United States, and such registration will impair and diminish Petitioner's goodwill and prior rights in its BURNING GLASS trademark, thereby causing irreparable damage and injury to Petitioner.

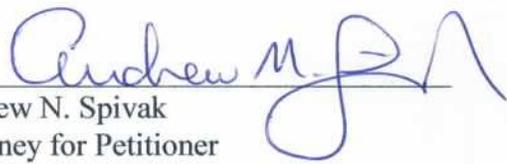
21. Therefore, Petitioner hereby formally petitions to cancel the registration of Respondents' abandoned and junior but still-claimed BURNING GLASS service mark pursuant to 15 U.S.C. §1064.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained, and that Respondent's above-referenced registration for the BURNING GLASS mark be cancelled

Respectfully submitted,

Dated: August 23, 2013

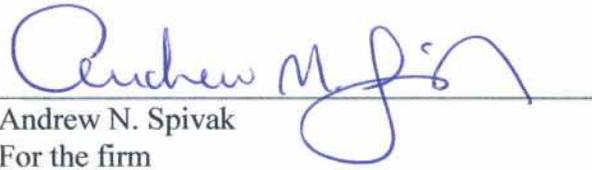
By:   
Andrew N. Spivak  
Attorney for Petitioner

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**CERTIFICATE OF SERVICE**

I, Andrew N. Spivak, one of the Attorneys for Petitioner, hereby certify that on this 23<sup>rd</sup> day of August, 2013, a true a correct copy of the foregoing PETITION FOR CANCELLATION was served via first class mail, postage prepaid upon:

Ellen Cunningham Ratchye  
817 Chicago Avenue  
Apt. 2  
Evanston, Illinois 60202

  
Andrew N. Spivak  
For the firm

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