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Filing date: **10/18/2013**

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	Shaggy Chic, Inc.		
Entity	Corporation	Citizenship	Nevada
Address	9811 W. Charleston Blvd., Suite #2 Las Vegas, NV 89117 UNITED STATES		

Attorney information	Erin E. Lewis Brownstein Hyatt Farber Schreck LLP 100 N. City Parkway, Suite 1600 Las Vegas, NV 89106 UNITED STATES lvpto@bhfs.com, jobermeyer@bhfs.com, kgoldberg@bhfs.com, elewis@bhfs.com, jmyers@bhfs.com Phone:7023822101		
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Registration Subject to Cancellation

Registration No	3902158	Registration date	01/04/2011
Registrant	Dena Designs, Inc. 888 Santa Maria Way Lafayette, CA 94549 UNITED STATES		

Goods/Services Subject to Cancellation

Class 018. First Use: 2010/06/00 First Use In Commerce: 2010/06/00 All goods and services in the class are cancelled, namely: Pet products and accessories, namely, pet collars; leashes; pet harnesses; pet tote bags; pet garments; animal carriers
Class 020. First Use: 2010/06/00 First Use In Commerce: 2010/06/00 All goods and services in the class are cancelled, namely: Beds for household pets
Class 021. First Use: 2010/06/00 First Use In Commerce: 2010/06/00 All goods and services in the class are cancelled, namely: Pet grooming items, namely, brushes and combs, pet feeding dishes

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Other	There was no bona fide use of the mark in a manner that would support registration under 15 U.S.C. Â§ 1052.

Attachments	Petition to Cancel - 3902158.pdf(622286 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	/Erin E. Lewis/
Name	Erin E. Lewis
Date	10/18/2013

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

Shaggy Chic, Inc.,
Petitioner,

v.

Dena Designs, Inc.,
Registrant.

CANCELLATION NO. _____

Registration No.: 3,902,158

Mark: SHAGGY CHIC

International Classes: 018, 020, 021

Registration Date: January 4, 2011

PETITION TO CANCEL

Shaggy Chic, Inc. ("Petitioner"), a Nevada corporation having a registered address of 9811 West Charleston Blvd, Suite #2, Las Vegas, Nevada 89117, believes it will be damaged by Registration No. 3,902,158 for the trademark SHAGGY CHIC and hereby petitions to cancel the same under 15 U.S.C. § 1064. The grounds for cancellation are as follows:

I. BACKGROUND FACTS

A. Petitioner's Mark

1. Petitioner owns and operates a retail pet store and pet grooming salon located in Las Vegas, Nevada, which opened to the public on December 1, 2012.

2. In connection with Petitioner's retail store and grooming salon, Petitioner offers pet grooming services, pet grooming products, pet toys and pet treats, among other things, under the trademark SHAGGY CHIC. Petitioner also sells its SHAGGY CHIC pet products online through its website located at www.shaggychic.com.

3. On or about October 18, 2013, Petitioner filed an application with the United States Patent and Trademark Office ("USPTO") to register the trademark SHAGGY CHIC

(“Petitioner’s Mark”) for “pet shampoo and conditioner; pet fragrances; deodorizers for pets; non-medicated grooming preparations for pets, namely, shampoos, conditioners, and fur deodorizers and detangling sprays” in International Class 003; “retail store services feature pet products; online retail store services featuring pet products; retail pet stores” in International Class 035; and “pet grooming services” in International Class 044. The USPTO assigned the application Serial No. 86-095,728 (“Petitioner’s Application”).

B. DDI Mark

4. Upon information and belief, and as stated in the records of the USPTO, Dena Designs, Inc. (“DDI”) owns Registration No. 3,902,158 (“Registration”) for the mark SHAGGY CHIC (“DDI Mark”) for “pet products and accessories, namely, pet collars; leashes; pet harnesses; pet tote bags; pet garments; animal carriers” in International Class 018; “beds for household pets” in International Class 020; and “pet grooming items, namely, brushes and combs, pet feeding dishes” in International Class 021.

5. Upon information and belief, and as stated in the records of the USPTO, DDI is a California corporation with an address of 888 Santa Maria Way, Lafayette, California 94549.

6. Upon information and belief, on March 29, 2006, by and through its attorney of record, DDI filed an intent-to-use application for the DDI Mark pursuant to 15 U.S.C. § 1051(b) for “pet products and accessories, namely, pet collars; leashes; pet harnesses; pet grooming items, namely brushes, combs, non-medicated shampoo, conditioner, cologne, soap and paw balm; pet feeding bowls; pet toys; pet tote bags; pet garments; animal carriers; and pet beds” in International Class 018. The USPTO assigned the application Serial No. 78-849371 (“DDI Application”).

7. On or about September 12, 2006, the USPTO issued an Office Action, refusing

registration of the DDI Mark on the basis that several goods identified in the DDI Application were misclassified in International Class 018.

8. On or about March 17, 2007, DDI responded to the Office Action by adding International Classes 003, 020, 021 and 028 to the DDI Application.

9. On or about October 9, 2007, the USPTO issued a Notice of Allowance for the DDI Application.

10. Following the Notice of Allowance, DDI filed five separate requests pursuant to 15 U.S.C. § 1051(d) for an extension of time to file a statement of use for each International Class identified in the DDI Application.

11. On or about October 12, 2010, by and through its attorney of record, DDI filed a statement of use pursuant to 15 U.S.C. §1051(d), wherein DDI alleged use of the DDI Mark in connection with all of the goods identified in International Classes 018, 020 and 021 (“Statement of Use”). The goods in Classes 003 and 028 were deleted from the DDI Application.

12. Upon information and belief, and as stated in the records of the USPTO, in support of the Statement of Use, DDI filed three specimens described as “digitally photographed leash,” “digitally photographed pet bed,” and “digitally photographed feeding dish,” respectively.

13. Upon information and belief, and as stated in the records of the USPTO, the Statement of Use contained an assertion by DDI that the DDI Mark “was first used by the applicant, or the applicant’s related company, licensee, or predecessor in interest at least as early as 06/00/2010, and first used in commerce at least as early as 06/00/2010, and is now in use in such commerce.”

14. In connection with the Statement of Use, DDI submitted a declaration, signed by

DDI's attorney of record, containing the following statements ("Declaration"):

Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the form or any resulting registration, declares that he/she is properly authorized to execute this form on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

15. The DDI Mark registered on the Principle Register on or about January 4, 2011.

The Registration that was issued to DDI is the subject of this Petition.

II. STANDING

16. Petitioner believes it will be damaged by the continuing registration of the DDI Mark because Petitioner reasonably believes that the USPTO will refuse registration of Petitioner's Mark based on a perceived likelihood of confusion with the DDI Mark. This belief is reasonable because (a) Petitioner's Mark and the DDI Mark are the same or confusingly similar, and (b) the USPTO may deem the goods and services in Petitioner's Application and the Registration to be highly related.

17. Petitioner's inability to obtain a registration for Petitioner's Mark will narrow the geographic scope of Petitioner's trademark rights and impair Petitioner's ability to enforce such rights against third parties.

18. In addition, Petitioner believes it will be damaged by the continuing registration

of the DDI Mark because Petitioner is interested in expanding its existing business to offer some of the goods listed in the Registration. Such expansion would be inhibited by the continuing registration of the DDI Mark.

III. GROUNDS FOR CANCELLATION

A. No Use of the DDI Mark

19. Upon information and belief, when DDI filed its Statement of Use, DDI had not made a bona fide use of the DDI Mark in a manner that would support registration under 15 U.S.C. § 1052.

20. Upon information and belief, the goods displayed in the photographic specimens filed by DDI in support of the Statement of Use constituted mere “token uses” of the DDI Mark.

21. Upon information and belief, any use of the DDI Mark that occurred on or prior to the filing date of DDI’s Statement of Use did not constitute use in the ordinary course of trade within the meaning of 15 U.S.C. § 1127.

22. Upon information and belief, any use of the DDI Mark that occurred on or prior to the filing date of DDI’s Statement of Use was made to reserve rights in the DDI Mark.

B. Registration Obtained Fraudulently

23. Upon information and belief, when DDI filed the Statement of Use and supporting Declaration, DDI falsely stated that the DDI Mark was first used in commerce in connection with all of the goods identified in the DDI Application at least as early as June 2010.

24. Upon information and belief, DDI falsely stated that the DDI Mark was in use in connection with all of the goods identified in the DDI Application at the time the Statement of Use and supporting Declaration were filed.

25. Upon information and belief, DDI instituted token uses of the DDI Mark in

connection with a leash, pet bed and feeding dish for the purpose of obtaining specimens to support DDI's Statement of Use.

26. Upon information and belief, DDI knew that its token uses of the DDI Mark, as depicted in the specimens, were insufficient to constitute use within the meaning of 15 U.S.C. § 1127 when DDI filed the Statement of Use and supporting Declaration.

27. Upon information and belief, DDI instituted token uses of the DDI Mark to avoid abandonment of the DDI Application.

28. Upon information and belief, by instituting token uses of the DDI Mark, DDI was improperly attempting to circumvent 15 U.S.C. § 1052(d), which provides a maximum period of thirty-six months for an intent-to-use applicant to institute use of a mark before the application is deemed abandoned.

29. Upon information and belief, DDI made express misrepresentations in its Statement of Use and supporting Declaration with the intention of deceiving the USPTO regarding its use of the DDI Mark.

30. Upon information and belief, when DDI filed the Statement of Use and supporting Declaration, DDI believed that the USPTO would not issue the Registration if DDI truthfully represented the nature of its use of the DDI Mark.

31. Upon information and belief, DDI's misrepresentations regarding its use of the DDI Mark were material to the registrability of the DDI Mark.

32. Upon information and belief, if the USPTO had been aware of the true nature of the DDI's use of the DDI Mark, the USPTO would not have issued the Registration.

33. Upon information and belief, if DDI failed to submit a Statement of Use on the date filed, the DDI Application would have been abandoned in accordance with 15 U.S.C. §

1052(d).

C. DDI Mark Abandoned

34. In the alternative, if DDI made a bona fide use of the DDI Mark in commerce on or prior to the filing date of DDI's Statement of Use, upon information and belief, DDI has abandoned all such use of the DDI Mark with no intention of resuming use.

35. Upon information and belief, DDI has not used the DDI Mark in commerce within the meaning of 15 U.S.C. § 1127 in the three consecutive years immediately preceding the date of this Petition.

IV. REQUEST FOR RELIEF

WHEREFORE, Petitioner prays that Registration No. 3,902,158 be cancelled, and that this Petition be sustained in Petitioner's favor.

Respectfully submitted,

Dated: October 18, 2013

By: /Erin E. Lewis/
Laura E. Bielinski
Kelley N. Goldberg
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106-4614

Attorneys for Petitioner,
Shaggy Chic, Inc.

PROOF OF SERVICE

Julie Obermeyer, an employee of Brownstein Hyatt Farber Schreck, LLP, says that on October 18, 2013, she served a copy of this PETITION TO CANCEL upon the following by enclosing the same in a First Class postage paid envelope and depositing it in the U.S. mail:

Dena Designs, Inc.
888 Santa Maria Way
Lafayette, CA 94549

I declare that the statement above is true to the best of my information, knowledge and belief.


Julie Obermeyer