

ESTTA Tracking number: **ESTTA567148**

Filing date: **10/25/2013**

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	TVI, Inc.		
Entity	Corporation	Citizenship	Washington
Address	11400 # 6th St., Suite 220 Bellevue, WA 98004 UNITED STATES		

Attorney information	Mark S. Leen Inslee, Best, Doezie & Ryder, P.S. 777 - 108th Ave. NE Suite 1900 Bellevue, WA 98004 UNITED STATES mleen@insleebest.com, ddascenzo@insleebest.com, jkovalenko@insleebest.com Phone:425-455-1234
----------------------	--

Registration Subject to Cancellation

Registration No	4023514	Registration date	09/06/2011
Registrant	Jensen-Noggle, Candice 1084 Clarendon Crescent Oakland, CA 94610 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 2011/05/08 First Use In Commerce: 2011/05/08 All goods and services in the class are cancelled, namely: Entertainment services, namely, providing a web site featuring photographic, audio, video and prose presentations featuring restoration, refinishing and renovation of furniture, clothing and accessories; Entertainment, namely, production of television shows featuring restoration, refinishing and renovation of furniture, clothing and accessories

Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	non-use under section 1(d) and section 45; abandonment under section 45; mark is not a trademark and is not registrable under section 1, 2 and 45

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration	3293933	Application Date	05/17/2006
-------------------	---------	------------------	------------

No.			
Registration Date	09/18/2007	Foreign Priority Date	NONE
Word Mark	RESTYLE STORE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2006/03/16 First Use In Commerce: 2006/03/23 Retail department store services		

U.S. Registration No.	4264176	Application Date	05/07/2012
Registration Date	12/25/2012	Foreign Priority Date	NONE
Word Mark	RECYCLE, REUSE, RESTYLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2006/03/16 First Use In Commerce: 2006/03/16 retail department store services		

U.S. Registration No.	4334352	Application Date	09/12/2012
Registration Date	05/14/2013	Foreign Priority Date	NONE
Word Mark	RESTYLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2006/03/01 First Use In Commerce: 2006/03/01 Retail department store services		

Attachments	Petition for Cancellation of RECYCLE RESTYLE.pdf(741333 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 First Class Mail on this date.

Signature	/mark leen/
Name	Mark S. Leen
Date	10/25/2013

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

For the Mark:	RECYCLE RESTYLE
Registration No.:	4,023,514
Registered On:	September 6, 2011

Cancellation No. _____

TVI, INC., a Washington corporation,

PETITION FOR CANCELLATION

Petitioner,

v.

CANDICE JENSEN-NOGGLE,

Registrant.

PETITION FOR CANCELLATION

The Petitioner, TVI, Inc., a Washington corporation, having its principal place of business at 11400 - 6th Street, Suite 220, Bellevue, Washington 98004, believes that it is or will be damaged by the continued registration of the mark RECYCLE RESTYLE, Registration No. 4,023,514, registered on September 6, 2011, and hereby petitions to cancel said Registration based on priority of use and likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), non-use under Section 1(d) of the Trademark Act, 15 U.S.C. § 1051(d), and Section 45 of the Trademark Act, 15 U.S.C. § 1127, abandonment of said Registration under Section 14 of the Trademark Act, 15 U.S.C. § 1064(3), and Section 45 of the Trademark Act, 15 U.S.C. § 1127, and that said "mark" is not a trademark and is not registrable on the Principal Register under Section 1, 2 and 45 of the Trademark Act, 15 U.S.C. §§ 1051, 1052 and 1127.

To the best of the Petitioner's knowledge, the name of the current owner/registrant of the Registration is Candice Jensen-Noggle, an individual of United States citizenship, whose address is 1084 Clarendon Crescent, Oakland, California 94610.

The required fee for this Petition for Cancellation is submitted herewith.

The grounds for this Petition for Cancellation are as follows:

1. TVI, Inc. is a corporation organized under the laws of the State of Washington, having its principal office at 11400 – 6th Street, Suite, 220, Bellevue, Washington 98004.

2. Since 1988, TVI, Inc. has been engaged in the retail department store service business through its retail department store chains known as "Savers" and "Value Village." Since 2006, TVI, Inc. has used the names RECYCLE and RESTYLE, singularly and in combination with other words, to brand some of its services.

3. TVI, Inc. is the owner of three U.S. Registrations for marks that include the names RECYCLE and RESTYLE or a combination thereof, as follows:

- | | |
|--|---|
| a. RESTYLE STORE
Registration #3,293,333 | Serial #78/885,677, filed under Section 1(a) of the Trademark Act on May 17, 2006, and registered on September 18, 2007, in Class 35 for "retail department store services" with a date of first use of March 16, 2006, and a date of first use in interstate commerce of March 23, 2006. A copy of this Registration is attached as <u>Exhibit A</u> . |
| b. RECYCLE, REUSE,
RESTYLE
Registration #4,264,176 | Serial #85/618,881, filed under Section 1(a) of the Trademark Act on May 7, 2012, and registered on January 1, 2013, in Class 35 for "retail department store services" with a date of first use/date of first use in interstate commerce of March 16, 2006. A copy of this Registration is attached as <u>Exhibit B</u> . |
| c. RESTYLE
Registration #4,334,352 | Serial #85/727,380, filed under Section 1(a) of the Trademark Act on September 12, 2013, and |

registered on May 14, 2013, in Class 35 for “retail department store services” with a date of first use/date of first use in interstate commerce of March 1, 2006. A copy of this Registration is attached as Exhibit C.

The above-referenced marks are collectively referred to as “TVI Registrations.”

4. The TVI Registrations identified in Paragraph 3 above are valid and subsisting, and have been used continuously in interstate commerce since 2006, and are presently being used in interstate commerce in the United States. The RESTYLE STORE mark, Registration #3,293,333, referenced in Paragraph 3(a) above, is incontestable pursuant to Section 15 of the Trademark Act.

5. As a result of TVI, Inc.’s use of the TVI Registrations, and in view of TVI, Inc.’s advertising and promotion of its services in association with the TVI Registrations, the TVI Registrations have a distinctive quality and are known to the relevant trade and public. TVI, Inc. has sold millions of dollars of goods and services in the United States under and through its aforesaid marks and has expended substantial amounts of money, time and effort in advertising, promoting and popularizing said marks extensively in the United States. As a result of TVI, Inc.’s use and advertising of its said marks, the marks are well known in the United States and recognized as identifying the high quality goods and services of TVI, Inc. Therefore, said marks and the goodwill associated therewith are valuable assets of TVI, Inc.

6. Candice Jensen-Noggle (the “Respondent”), an individual of United States citizenship whose address is 1084 Clarendon Crescent, Oakland, California 94610, is believed to be the current owner/registrant of RECYCLE RESTYLE, Registration No. 4,023,514, in Class 41 for “entertainment services, namely, providing a web site featuring photographic, audio, video and prose presentations featuring restoration, refinishing and renovation of

furniture, clothing and accessories; entertainment, namely, production of television shows featuring restoration, refinishing and renovation of furniture, clothing and accessories.” The application for said Registration was filed on June 10, 2009, under Section 1(b) of the Trademark Act. The Registration was issued on September 6, 2011, with a claimed date of first use/date of first use in interstate commerce of March 8, 2011. A copy of this Registration is attached as Exhibit D.

7. The TVI Registrations have priority over the Respondent’s Registration because all three of TVI’s marks were used in interstate commerce on or before March 16, 2006, prior to the Respondent’s date of first use of May 8, 2011. In particular, the TVI Registration for RESTYLE STORE referenced in Paragraph 3(a) above was filed under Section 1(a) of the Trademark Act on May 17, 2006, with a date of first use of March 16, 2006, and a date of first use in interstate commerce of March 23, 2006. These dates are all prior to the Respondent’s filing date of June 10, 2009, claimed date of first use/date of first use in interstate commerce of May 8, 2011, and registration date of September 6, 2011.

8. The Respondent’s Registration for RECYCLE RESTYLE is confusingly similar to the TVI Registrations. The Respondent’s Registration for RECYCLE RESTYLE shares two words -- “recycle” and “restyle” -- with the TVI Registration for REUSE, RECYCLE, RESTYLE listed in Paragraph 3(b) above. The Respondent’s Registration for RECYCLE RESTYLE shares the word “restyle” in common with all three of the TVI Registrations. Therefore, the Respondent’s Registration so resembles the TVI Registrations as to be likely to cause confusion, to cause mistake or to deceive as to the source of the services provided by TVI, Inc. and the Respondent.

9. The Respondent's Registration for RECYCLE RESTYLE is also confusingly similar to the TVI Registrations because of the services listed in the Respondent's Registration. The services listed in the Respondent's Registration are "entertainment services, namely, providing a web site featuring photographic, audio, video and prose presentations featuring restoration, refinishing and renovation of furniture, clothing and accessories; entertainment, namely, production of television shows featuring restoration, refinishing and renovation of furniture, clothing and accessories." The services listed in the TVI Registrations are "retail department store services." The Respondent's Registration is registered for services related to furniture, clothing and accessories. In turn, TVI has sold furniture, clothing and accessories in the United States in its "Savers" retail department stores for years. A large segment of TVI, Inc.'s business is selling used furniture, clothing and accessories to consumers, possibly for restoration, refinishing and renovation.

10. As a result of the aforementioned confusion, mistake and deception, TVI, Inc. will be damaged by the Respondent's continued registration of the RECYCLE RESTYLE mark for the services identified in her Registration.

11. On information and belief, the Respondent has not used, is not using, and does not intend to use the RECYCLE RESTYLE mark in interstate commerce as required by Section 1(d) of the Trademark Act, 15 U.S.C. 1051(d), and has abandoned the mark within the meaning of Section 14 of the Trademark Act, 15 U.S.C. § 1064(3), and Section 45 of the Trademark Act, 15 U.S.C. § 1127. In addition, on information and belief, the Respondent's "mark" is on a single creative work and is, therefore, not a trademark and not registrable on the Principal Register under Section 1, 2 and 45 of the Trademark Act, 15 U.S.C. §§ 1051,

1052 and 1127. To the best of TVI, Inc.'s knowledge, the Respondent's only use of the mark is on an undeveloped website, www.recyclerestyle.com. Therefore, Registration No. 4,023,514 for RECYCLE RESTYLE should be cancelled in accordance with Section 14 of the Trademark Act, 15 U.S.C. § 1064.

WHEREFORE, TVI, Inc. requests that this Petition for Cancellation be granted and Registration No. 4,023,514 for RECYCLE RESTYLE be cancelled.

TVI, Inc. herewith submits this Petitioner for Cancellation along with the requisite filing fee in the amount of \$300.00.

Please direct all communications to Mark S. Leen of Inslee, Best, Doezie & Ryder, P.O. Box 90016, Bellevue, Washington 98009-9016.

DATED this 25th day of October, 2013.

INSLEE, BEST, DOEZIE & RYDER, P.S.

By 

Mark S. Leen, W.S.B.A. #35934
Don E. Dascenzo, W.S.B.A. #8410
Attorneys for Petitioner

Mark S. Leen
Don E. Dascenzo
Inslee, Best, Doezie & Ryder, P.S.
P.O. Box 9016
Bellevue, WA 98009-9016
Phone: (425) 455-1234
Fax: (425) 635-7720
mleen@insleebest.com
ddascenzo@insleebest.com

Enclosures

Filing Fee of \$300.00 submitted electronically
Copy of U.S. Reg. Nos. 3,293,333; 4,264,176; 4,334,352; and 4,023,514

CERTIFICATE OF TRANSMISSION

I hereby certify that the foregoing PETITION FOR CANCELLATION is being electronically transmitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") at <http://estta.uspto.gov/> on the date mentioned below.

DATED this 25th day of October, 2013.

INSLEE, BEST, DOEZIE & RYDER, P.S.

By 

Mark S. Leen, W.S.B.A. #35934
Don E. Dascenzo, W.S.B.A. #8410
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITION FOR CANCELLATION has been served on Respondent Candice Jensen-Noggle by mailing said copy on October 25, 2013, via First Class Mail, postage prepaid, to:

Candice Jensen-Noggle
1084 Clarendon Crescent
Oakland, California 94610

DATED this 25th day of October, 2013.

INSLEE, BEST, DOEZIE & RYDER, P.S.

By 

Mark S. Leen, W.S.B.A. #35934
Don E. Dascenzo, W.S.B.A. #8410
Attorneys for Petitioner

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 3,293,933

United States Patent and Trademark Office

Registered Sep. 18, 2007

SERVICE MARK
PRINCIPAL REGISTER

RESTYLE STORE

TVI, INC. (WASHINGTON CORPORATION)
SUITE 220
11400 - 6TH ST.
BELLEVUE, WA 98004

FOR: RETAIL DEPARTMENT STORE SERVICES,
IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-16-2006; IN COMMERCE 3-23-2006.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "STORE", APART FROM THE
MARK AS SHOWN.

SER. NO. 78-885,677, FILED 5-17-2006.

G. MAYERSCHOFF, EXAMINING ATTORNEY

EXHIBIT A

United States of America

United States Patent and Trademark Office

RECYCLE, REUSE, RESTYLE

Reg. No. 4,264,176

Registered Dec. 25, 2012

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

TVI, INC. (WASHINGTON CORPORATION)
11400 - 6TH ST., SUITE 200
BELLEVUE, WA 98004

FOR: RETAIL DEPARTMENT STORE SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-16-2006; IN COMMERCE 3-16-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 3,293,933.

SER. NO. 85-618,881, FILED 5-7-2012.

ROBERT STRUCK, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT B

United States of America
United States Patent and Trademark Office

RESTYLE

Reg. No. 4,334,352

Registered May 14, 2013

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

TV1, INC. (WASHINGTON CORPORATION)
11400 6TH ST., SUITE 220
BELLEVUE, WA 98004

FOR: RETAIL DEPARTMENT STORE SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-1-2006; IN COMMERCE 3-1-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,293,933 AND 4,264,176.

SER. NO. 85-727,380, FILED 9-12-2012.

JIM RINGLE, EXAMINING ATTORNEY



Lynn Street Lee
Acting Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

RECYCLE RESTYLE

Reg. No. 4,023,514

Registered Sep. 6, 2011

Int. Cl.: 41

SERVICE MARK

PRINCIPAL REGISTER

JENSEN-NOGGLE, CANDICE (UNITED STATES INDIVIDUAL)
1084 CLARENDON CRESCENT
OAKLAND, CA 94610

FOR: ENTERTAINMENT SERVICES, NAMELY, PROVIDING A WEB SITE FEATURING PHOTOGRAPHIC, AUDIO, VIDEO AND PROSE PRESENTATIONS FEATURING RESTORATION, REFINISHING AND RENOVATION OF FURNITURE, CLOTHING AND ACCESSORIES; ENTERTAINMENT, NAMELY, PRODUCTION OF TELEVISION SHOWS FEATURING RESTORATION, REFINISHING AND RENOVATION OF FURNITURE, CLOTHING AND ACCESSORIES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 5-8-2011; IN COMMERCE 5-8-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-982,172, FILED 6-10-2009.

FONG HSU, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT D