

ESTTA Tracking number: **ESTTA570025**

Filing date: **11/10/2013**

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	DEAD HORSE		
Entity	Partnership	Citizenship	Texas
Composed Of:	Argo, Micheal UNITED STATES Sevall, Scott UNITED STATES Guyote, Ronald J. UNITED STATES Martin, Gregory S. UNITED STATES Price, Allen W. UNITED STATES		
Address	818 Thomas Ridge San Antonio TEXAS, TX 78251 UNITED STATES		

Attorney information	Michael Spradley Spradley, PLLC 1 Riverway, Suite 1700 Houston, TX 77056 UNITED STATES trademarks@myidealaw.com Phone:713-728-3687
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Registration Subject to Cancellation

Registration No	3830133	Registration date	08/10/2010
Registrant	Haines, Jeffrey Philip 6137 Newport Terrace Frederick, MD 21701 USX		

Goods/Services Subject to Cancellation

Class 041. First Use: 2003/00/00 First Use In Commerce: 2003/00/00 All goods and services in the class are cancelled, namely: Entertainment in the nature of live performances by rock group; Entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; Entertainment in the nature of musical group; Entertainment, namely, live performances by rock groups

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Related Proceedings	85834242
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Attachments	ttab.pdf(121033 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	/Michael Sean Spradley/
Name	Michael Spradley
Date	11/10/2013

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

Dead Horse, a Texas Partnership

Petitioner,

vs.

Jeffrey Phillip Haines

Registrant.

§ Opposition No. _____
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In re U.S. Trademark Registration No. 3830133 for the mark DEADHORSE BREATHING, filed on February 8, 2009, published on May 25, 2010, and registered on August 10, 2010.

PETITION FOR CANCELLATION

Commissioner:

Allen W. Price (“Petitioner”), having a business address of 818 Thomas Ridge, San Antonio TX, 78251 believes he would be damaged by the trademark DEADHORSE BREATHING, shown in US Trademark Registration Number 3830133, and hereby petitions for cancellation of the trademark under the provisions of the Trademark Act of 1946, § 1064 of Title 15 of the United States Code.

Petitioner asserts the following as grounds for the cancellation:

1. Petitioner has had common law rights in the mark DEADHORSE since the 1980’s in connections with its use of the mark traveling as the band DEADHORSE.

2. Petitioner has filed a trademark application to register the mark DEAD HORSE on January 28, 2013.
3. In an Office Action of the trademark prosecution of DEAD HORSE, DEADHORSE BREATHING has been cited as grounds for not registering DEAD HORSE.
4. The USPTO's denial of registration of DEAD HORSE harms Petitioner.
5. Registrant owns registered trademark for DEADHORSE BREATHING for use in connection with "entertainment" in IC 41, registration number 3830133 (Registrant's Mark). Registrant's mark recites "Entertainment in the nature of live performances by rock group; Entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances; Entertainment in the nature of musical group; Entertainment, namely, live performances by rock groups."
6. Registrant has not used Registered mark in interstate commerce in connection with the registered goods and/or services for more than three (3) consecutive years.
7. Pursuant to 15 U.S.C. 1127, Registrants have abandoned the registered mark DEADHORSE BREATHING.

WHEREFORE, Petitioner prays that of the mark shown in U.S. Trademark Registration No. 3830133 for DEADHORSE BREATHING be cancelled, and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

8/18/2013

Filed Electronically

trademarks@myidealaw.com

A handwritten signature in cursive script that reads "Michael Spradley".

Michael Spradley, Reg. No. 69177

Spradley PLLC

1 Riverway, Suite 1700

Houston, TX 77056

(713) 728-3687

CERTIFICATION OF SERVICE

I hereby certify that a copy of the above and foregoing **PETITION FOR CANCELLATION** was served on the 10th day of October, 2013 on the following via U.S. first class mail, postage pre-paid and properly addressed to Applicant's counsel of record as follows:

Jeffrey Philip Haines
6137 Newport Terrace
Frederick MARYLAND 21701

Respectfully submitted,



Michael Spradley, Reg. No. 69177
Spradley PLLC
1 Riverway, Suite 1700
Houston, TX 77056
(713) 728-3687

10/10/2013

Filed Electronically

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