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Filing date: **04/25/2014**

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	Carnevor, Inc.		
Entity	Corporation	Citizenship	California
Address	610 Amigos Drive Unit C, Redlands, CA 92373 UNITED STATES		

Attorney information	Stephen L Anderson Anderson & Associates 27247 Madison Ave Ste 121 Temecula, CA 92590 UNITED STATES attorneys@brandxperts.com Phone:9512961700		
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Registration Subject to Cancellation

Registration No	4326591	Registration date	04/30/2013
Registrant	Dog Haus LLC Suite 104 Pasadena, CA 91106 UNITED STATES		

Goods/Services Subject to Cancellation

Class 043. First Use: 2010/10/00 First Use In Commerce: 2010/10/00 All goods and services in the class are cancelled, namely: cafe and restaurant services; catering services; restaurant take out services
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Grounds for Cancellation

The mark comprises matter that, as a whole, is functional	Trademark Act section 2(e)(5)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Genericness	Trademark Act section 23
The mark is merely descriptive	Trademark Act section 2(e)(1)

Attachments	DOG HAUS - (words)t PETITION_FOR_CANCELLATION.pdf(336973 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	/StephenLAnderson/
Name	Stephen L Anderson
Date	04/25/2014

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

In the Matter of Registration No.: 4,326,591

Mark: DOG HAUS

Issued: April 30, 2013

CARNEVOR INC.)	Cancellation No.:
)	
Petitioner,)	PETITION FOR CANCELLATION
)	
vs.)	
)	
DOG HAUS, LLC)	
Respondent.)	
_____)	

Petitioner, Carnevor, Inc., a Corporation organized and existing under the laws of the State of California (“Petitioner”) believes that it is being damaged by, and will be further damaged by the continued registration of the mark “DOG HAUS” shown in Registration No. 4,326,591 issued on April 30, 2013 to DOG HAUS, LLC, (“Applicant”), in connection with “cafe and restaurant services; catering services; restaurant take out services” in International Class 43 (the “Subject Registration”) and hereby petitions to cancel such Registration under 15 U.S.C. §1064(3).

The grounds for cancellation are as follows:

1. Petitioner, Carnevor, Inc. is a California corporation registered and doing business under the fictitious business names “HUNDEHAUS” and “HUND & BIER HAUS”. Petitioner is the owner of one of a considerable, yet growing number of fast-casual restaurants that have sprouted up around the country featuring premium hot dogs and sausage sandwiches. Like many other third parties in this long-established, yet fast-growing industry, Petitioner has used, and is now using certain commonly-used designations, including HOT DOG, DOG and HAUS (German for “restaurant,” “establishment” and/or “house.”)

2. Since at least as early as January 20, 2011, Petitioner and its related company or predecessor(s) has/have adopted and continuously used the mark HUNDEHAUS in United States commerce in connection with “bar services, restaurant services and catering services” in International Class 043, and has/have sold and distributed food products, including premium hot dogs, sausage sandwiches and drinks to the public.

3. Since at least as early as August 1, 2012, Petitioner and its related company or predecessor(s) has/have adopted and continuously used the mark HUND & BIER HAUS in United States commerce in connection with “bar services, restaurant services and catering services” in International Class 043, and has/have sold and distributed food products, including premium hot dogs, sausage sandwiches and drinks to the public.

4. Petitioner is the owner of United States Trademark Certificate of Registration No. 4,336,555 for the mark HUND & BIER HAUS (words only) registered on May 14, 2013 in connection with “bar services, restaurant services” (“Petitioner’s Registration”). Petitioner’s Registration remains valid and subsisting on the Supplemental Register.

5. Petitioner is also the owner of United States Trademark Application Serial No. 85/459723 (filed on October 29, 2011) for the mark HUNDEHAUS for restaurant services in International Class 043 (“Petitioner’s Application”).

6. On March 03, 2014, the Trademark Examiner assigned to review Petitioner’s Application issued an initial Office Action refusing registration of the applied-for mark HUNDEHAUS, on the grounds that in her opinion, Petitioner’s Application was barred by the mark shown in the Subject Registration, No. 4,326,591. According to the Examiner, “the two marks DOG HAUS and HUNDEHAUS create the same commercial impression and both the applicant and registrant provide restaurant services. Therefore, consumers are likely to be confused and

mistakenly believe that the services originate from a common source. Therefore, registration must be refused under Section 2(d) of the Lanham Act.”

7. For many of the same reasons as are alleged herein, Petitioner expects to overcome the Examiner’s Office Action refusing Petitioner’s Application, and further maintains that such refusal was based on relatively scant analysis, a wholly defective and incomplete review of the relevant USPTO records, and that the Examiner failed to consider all of the relevant, proper and material *Dupont* factors and considerations of fact and law under the particular circumstances.

8. Moreover, the Subject Registration cited by the Trademark Examiner consists solely of the merely descriptive terms “DOG” and “HAUS” as have been commonly used for scores of years, by legions of third-party proprietors of hot dogs, sausages and beer. As such, the composite mark “DOG HAUS” shown in the Subject Registration fails to function as a trademark and was itself improperly issued on the Principal Register without the appropriate and requisite disclaimer of each of its merely descriptive terms. Further, such registration was issued despite the prior registration of nearly identical and highly similar marks as are discussed below.

9. By virtue of the Trademark Examiner’s refusal of Petitioner’s Application, Petitioner has been harmed by the Subject Registration and shall continue to be damaged by said registration to the extent that it may bar Petitioner from registration of the mark shown in Petitioner’s Application Serial No. 85/459723.

10. Petitioner has been further damaged by the Subject Registration, and is being damaged by said registration for several additional reasons as are described below, including that said registration casts a cloud over Petitioner’s Registration, subjects Petitioner to the unwarranted and improper threats made by the Respondent as are described in paragraphs 18-19 and 35-37, below, and that the Subject Registration is being misused by Respondent in an unfair and improper attempt to restrict legitimate, nominative and fair use of the merely descriptive terms “DOG” and

“HOUSE” (and its German translation “HAUS”) in connection with restaurant services, particularly related to the sale of hot dogs and German-style sausages.

11. Upon information and belief, Respondent, DOG HAUS, LLC (“Respondent”) is a Limited Liability Company organized in the State of California on August 17, 2010, with a current business address of 105 N. Hill Street, #104, Pasadena, California 91106.

12. On August 02, 2011, Respondent filed United States Trademark Application Serial No. 85/387,667 for the mark DOG HAUS (words only, in standard characters) which it claimed to have used since at least as early as October 00, 2010 in connection with “cafe and restaurant services; catering services; restaurant take out services”.

13. Within the Subject Application, Respondent, being 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, and the like, may jeopardize the validity of the application or any resulting registration, Respondent’s attorney declared, *inter alia*, that: he is properly authorized to execute this application on behalf of the applicant; that he believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his own knowledge are true; and that all statements made on information and belief are believed to be true.”

14. In support of the Subject Application Serial No. 85/387,667 Respondent filed

therewith a single specimen of use which it described as an “advertisement from web page displaying mark” which apparently consisted of a purported screenshot taken on August 2, 2011 from a website allegedly residing at <http://doghausdogs.com>. Such specimen describes the Respondent’s business as being the “home of the grand slam and little leaguer dogs and the freiburger,” and states, inter alia: “NEW DOG debuts today! The Old Town Dog.” The specimen features items called HAUS DOGS that it puffs are the “best of the wüurst” and invites customers to “top (your) dogs and burgers.” Without question, the specimen of use submitted in support of registration makes clear that the Respondent uses the term “dogs” in its merely descriptive sense to refer to its offerings of hot dogs, bratwurst and/or sausages.

15. According to the records of the USPTO, on November 29, 2011, the Examining attorney assigned to review Respondent’s Application Serial No. 85/387,667 issued an Office Action enclosing information regarding pending application Serial Nos. 85/119,201 and 85/278,016 the filing date of which applications preceded the Respondent’s filing date and noted that “[t]here may be a likelihood of confusion between the marks under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).” In such Office Action, the Examining Attorney further required the Respondent to submit an English translation of all foreign wording, namely that the wording “haus” required translation.

16. According to the records of the USPTO, in support of Application Serial No. 85/387,667, on December 19, 2011, Respondent filed a Response to Office Action which entered the statement that “[t]he English translation of ‘haus’ in the mark is ‘house’” and which further argued in support of the registration, stating, inter alia:

“The Examiner has refused registration of Applicant’s mark on the grounds that U.S. Applications Serial Nos. 85/119,201 (Highlands Dog Haus) and 85/278,016 (The Dog House) are confusingly similar to Applicant’s mark (Dog Haus) under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). For the reasons detailed below, Applicant respectfully disagrees with the Examiner’s findings.

...

“[t]he mark set forth in Application Serial No. 85/119,201 (Highlands Dog Haus) is not similar in overall commercial impression, appearance, spelling, meaning or connotation to Applicant’s mark in Application Serial No. 85/387,667 (Dog Haus). Although both marks contain the overlapping terms Dog and Haus, Application Serial No. 85/119,201 also contains the additional and more dominant first term, “Highlands.” This additional, more dominant term serves to clearly differentiate the parties’ marks.”

“[t]he Applicant (Dog Haus) operates a fast food type of restaurant in Southern California that has no relationship to skiing, mountains, or Colorado.”

17. Based on the aforementioned statements as set forth in the Subject Application, according to the records of the USPTO, the Subject Registration issued on the Principal Register on April 30, 2013 in connection with “cafe and restaurant services; catering services; restaurant take out services.”

18. On or about March 28, 2014, Petitioner received a “cease and desist letter” along with draft Complaint for Damages sent by one of Respondent’s attorneys, wherein Respondent claimed that Petitioner is infringing and has infringed upon the Subject Registration. Therein, Respondent has demanded that Petitioner stop using the designations HUNDEHAUS, HUND BIER HAUS, and the HUND & BIER HAUS mark shown in Petitioner’s Registration and has otherwise explicitly threatened to bring immediate legal action against Petitioner, its related company, predecessors and even its officers as related to the Petitioner’s use of such designation. In such letter and the attached draft lawsuit, Respondent has alleged service mark infringement, unfair competition, trademark infringement, false advertising and deceptive practices, injury to business reputation and dilution and unjust enrichment and threatens to seek seeks a Preliminary Injunction, Permanent Injunction, and Damages, against several putative Defendants, including Petitioner, its Chief Executive Officer and its predecessor.

19. Since sending such “cease and desist” letter and draft Complaint to Petitioner, Respondent’s counsel has barked several subsequent dogged threats imminent legal action and threatened to seek cancellation of Petitioner’s Registration.

20. Petitioner has never used the designation DOG HAUS in any manner related to its business. To the contrary, Petitioner and its predecessor(s) has/have used the designations HUNDEHAUS and HUND & BIER HOUSE as a source identifier for its business offering and selling hot DOGs, and German-style sausages, bratwurst and beers. Petitioner adopted and used such designations long prior to ever being aware of any alleged use of the purported mark DOG HAUS. Petitioner is further aware and maintains that the terms: DOG and HOUSE (and HAUS)

First Basis for Cancellation

The designations DOG HOUSE and DOG HAUS are the generic for the services for which the Subject Registration was registered, when used in association with restaurant services of the Respondent is merely descriptive thereof, and are comprised of matter that as a whole, is functional for German-themed hot dog, sausage and beer vendors.

15 U.S.C. § 1064, 15 U.S.C §1052(e)

21. Petitioner incorporates by reference all prior paragraphs in this Petition for Cancellation.

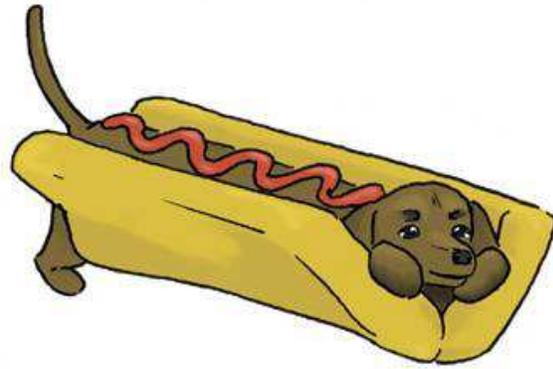
22. The Subject Registration should not have been registered on the Principal Register for any reason, and was improperly registered without a disclaimer of its merely descriptive terms and the functional composite.

23. The designations DOG and HOUSE (and its phonetic equivalent translated into the original German (HAUS) were, are, or have become the generic name for the services for which the Subject Registration was registered. The designations DOG, HOUSE and HAUS used widely in association with the nature and style of restaurant services of the Respondent and other third parties, is merely descriptive, and the composite designation DOG HAUS is simply comprised of matter that, as a whole is functional for restaurants which specialize in the sale of hot dogs, sausages, beer and bratwurst.

24. The designations DOG and HAUS are, and for more than one hundred years have been generic and merely descriptive of the services offered by Petitioner and Respondent as well as a significant number of unrelated third party restaurants who respectively offer hot dogs, sausages, frankfurters and bratwurst in a casual setting. Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1); TMEP section 1209 et seq. A mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. 1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Bright Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); TMEP section 1209.01(b).

25. One of the most common definitions for the term “DOG” is: “a highly seasoned sausage, especially a frankfurter, served hot in a long roll split lengthways.” (Frankfurters are named for Frankfurt, Germany, the city of their origin, where they were sold and eaten at beer gardens.) The name “DOG” in relation to sausages, comes from the resemblance of a sausage to a dachshund and was popularized by cartoonist T.A. Dorgan (circa 1890) and has been widely used by third parties to refer to frankfurters and sausages, worldwide, for well over one hundred years.





26. The USPTO has routinely considered the term “DOG” to be merely descriptive of hot dogs and restaurant services featuring hot dogs and prior to registration of marks containing such descriptive wording, a disclaimer of any exclusive right to use such term is almost always required. There are hundreds of prior registrations wherein the respective owners have each disclaimed the term DOG as used in connection with restaurant services, including, for example:

Reg. No.	Mark	Services	Disclaimer Statement
1716803	THE DOG HOUSE HOT DOGS (and design) Sep. 15, 1992	fast food and carry-out restaurant services	"HOT DOGS"
3313098	JOHNNIE’S DOG HOUSE	Restaurant services; and catering services	"DOG HOUSE"
3435043	HOUSE OF DOGGS	Restaurants	“DOGS”
3269517	WIENER HAUS GOURMET SAUSAGES & HOT DOGS (and design)	restaurant services	"WIENER HAUS" and "GOURMET SAUSAGES AND HOT DOGS"

1145343	HOTDOG CASTLE KING OF HOTDOGS (and design)	Restaurant Services	“HOT DOG”
1112514	CORN DOG FACTORY (stylized)	restaurant services	"CORN DOG"
1238896	THE HOT DOG SHOPPE (and design)	Restaurant Services	“HOT DOG SHOPPE”
1292558	HOT DOG WORKS	Restaurant Services	“HOT DOG”
1348744	THE HOT DOG PLACE (and design)	Fast food Restaurant Services	“THE HOT DOG PLACE”
1651814	DOCKSIDE DOG	Restaurant Services	“DOG”
1859288	HOT DOG CENTRAL	Fast food Restaurant services	“HOT DOG”
2032451	HOT DOG HAVEN	Restaurant services	"HOT DOG"
2094682	THE CHICAGO DOG (and design)	Fast food restaurant services	“CHICAGO DOG”
2777866	DOG TOWN	Restaurant services	“DOG”
2842487	CITY DOGS (and design)	Restaurant services	“DOGS”
3134681	PHAT DOGS	Restaurant services	“DOGS”
3300459	NAKED DOG	Restaurant services namely, the preparation and serving of a hotdog in a bun, without anything on the hotdog	“DOG”
3517786	HOT DOG PALACE	Cafe-restaurants; Carry-out restaurants; ...Restaurant services...	"HOT DOG"
3592262	CAPITOL DAWG	Restaurant services	“DOG”
3740385	JUST DOGS	Restaurant services, including hot dogs and toppings	“DOGS”
4038361	THE HOT DOG FACTORY	Bar and restaurant services; Cafe and restaurant services; Cafe-restaurants;...	"HOT DOG"
4158899	UNIVERSITY DOGS (and design)	Fast-food restaurants	“DOGS”
4173309	DEVIL DAWGS	Restaurants services featuring a hot dog stand	“DOGS”
4214119	CHI DOG (and design)	Mobile café services for providing food and drink	“DOG”

4289955	RETRO DOG (and design)	Restaurant services	“DOG”
4316511	ATOMIC DAWG (and design)	Restaurant services	“DOG”
4469049	BND'Z BURGERZ AND DOGZ (and design)	Restaurant services, namely, providing of food and beverages for consumption on and off the premises	"BURGERS AND DOGS"
4413634	BND'Z BURGERZ AND DOGZ	Restaurant services, namely, providing of food and beverages for consumption on and off the premises	"BURGERS AND DOGS"
4447303	DEXTER'S DOGS	Providing of food and drink; dine in and take out restaurant services	"DOGS"
Ser. No. 85084277	THE-DOG-HOUSE SPORTS- BAR-&GRILL (and design)	Restaurant Services	"THE DOG HOUSE" OR "SPORTS BAR AND GRILL"

Such evidence clearly demonstrates that disclaimers are normally required for the merely descriptive wording “DOG” when applied in regard to restaurant services.

27. The term “HOUSE” which is derived from the German word “HAUS” is commonly defined to refer to a building for any purpose, and has been used widely for centuries to refer to a restaurant, as an adjective: (e.g., served by a restaurant as its customary brand: “the house wine,” a “house salad”, “house dressing” or “specialties of the house”); as a noun (e.g., a “steak house,” a “chop house,” a “fish house” an alehouse, or a “public house”); and in branding for popular restaurant chains (The Yard House, the International House of Pancakes, The Chart House.

28. The United States Trademark Office also considers the term “HAUS” to be descriptive of “restaurant services.” Listed immediately below are examples of other third party registrations in which the term HAUS has been disclaimed in connection with restaurant services.

Reg. No.	Mark	Services	Disclaimer Statement
1482771	SCHMIDT'S SAUSAGE HAUS UND RESTAURANT	Restaurant services	"SAUSAGE HAUS UND RESTAURANT"
1973796	SCHMIDT'S SAUSAGE HAUS UND RESTAURANT	Restaurant services	"SAUSAGE HAUS UND RESTAURANT"
2195174	BAVARIAN HAUS (and design)	Restaurant services	"BAVARIAN HAUS"
3269517	WIENER HAUS GOURMET SAUSAGES & HOT DOGS (and design)	Restaurant services	"WIENER HAUS" and "GOURMET SAUSAGES AND HOT DOGS"
2068332	CASABLANCA COFFEE HAUS	Restaurant/cafe services featuring food and drink, namely, coffee, candy, soups and bakery goods	CASABLANCA COFFEE HAUS
3368193	THE BELGIAN WAFFLE HAUS & MORE (and design)	Restaurant services	"THE BELGIAN WAFFLE HAUS"
3426543	THE DÖNER HAUS	Restaurants	"HAUS"
3250867	SHIPYARD BREW HAUS	Restaurant and bar services	"BREW HAUS"
3700989	HAUS 658	Bar services;... Catering; Catering of food and drinks; ... Pubs; Restaurant; Tea rooms; Wine bar	"HAUS"
4450634	BURGERHAUS (and design)	Restaurant Services restaurant services featuring gourmet hamburgers	"BURGERHAUS"
4346520	G GESTALT HAUS (and design)	Bar services; Restaurant services	"HAUS"

29. Petitioner's Registration for "HUND & BIER HAUS" was registered on the Supplemental Register. Moreover, prior to U.S. Registration No. 4173267 for the mark "BRAT HAUS" being allowed on the Supplemental Register, the USPTO Examiner noted that the "BRAT HAUS" was "comprised of a combination of descriptive terms that fails to result in a separate, nondescriptive meaning. Combined together, the entire mark merely describes a restaurant that

serves bratwurst.” Similarly, the Subject Registration must be cancelled and should not have been permitted for registration on the Principal Register. Moreover, there are thousands of marks which have disclaimed the term “HOUSE”. See, e.g., U.S. Reg. No. 3225021 for the mark THE DAWG HOUSE GRILL ALL AMERICAN FAVORITES (and design) wherein the terms "THE", "HOUSE", "GRILL", and "ALL AMERICAN FAVORITES" were disclaimed; and Reg. No. 2711636 for BIG DOG'S CHOP HOUSE disclaiming "CHOP HOUSE." Such evidence clearly demonstrates that disclaimers are normally required for the merely descriptive wording HAUS.

30. The mere combination of descriptive words does not automatically create a new non-descriptive term. The combination of descriptive words may also result in nothing more than the combination of descriptive words. *In re Quik-Print Copy Shop, Inc.*, 205 USPQ 505 (CCPA 1980); *In re IBP, Inc.*, 228 USPQ 303 (TTAB 1985); *In re Wink Corp.*, 218 USPQ 739 (TTAB 1983). Combinations of merely descriptive components are registrable only if the juxtaposition the terms invents or evokes a unique commercial impression or if the term has a bizarre or incongruous meaning as applied to the services. *In re Shutts*, 217 USPQ 363 (TTAB 1983); *In re TBG Inc.*, 229 USPQ 759 (TTAB 1986). A mark which combines descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning. *In re Ampco Foods, Inc.*, 227 USPQ 331 (TTAB 1985). However, where the combination of descriptive words creates no incongruity, and no imagination is required to understand the nature of the goods or services, the mark remains merely descriptive. *In re Gould Paper Corp.*, 5 USPQ2d 1110 (Fed. Cir. 1987); *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660 (TTAB 1988); *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977); *In re Scholastic Testing Service, Inc.*, 196 USPQ 517 (TTAB 1977); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973.)

31. Thus, the composite “DOG HAUS” taken together remains merely descriptive of, and functional for restaurant serving hot dogs and sausages, the same way that the terms “STEAK

HOUSE” “FISH HOUSE” “PANCAKE HOUSE”, “CHOP HOUSE”, “WAFFLE HAUS” and “ALE HOUSE” are used generically to refer to restaurants serving such foods and drinks. At best “DOG HOUSE” is an extremely weak and commonly used designation that is strictly limited, should never have been allowed for registration, and each of its elements should have been disclaimed.

32. The Subject Registration was further improperly allowed for registration despite that the USPTO Records show widespread third party use of each of its terms. Moreover, the Subject Registration should not have been registered due not only to its mere descriptiveness, but also in further light of a likelihood of confusion between the Subject Mark DOG HAUS as compared with a number of prior registered marks owned by third-parties for restaurant services that were highly similar in sight, sound, and connotation thereto. Such third party registrations that should have barred the Subject Registration under Trademark Act Sections 2(d) and 2(e), include the following:

Reg. No.	Mark
1716803	THE DOG HOUSE HOT DOGS
1724010	THE DOG HOUSE
1718426	THE DOG HOUSE
3269517	WIENER HAUS GOURMET SAUSAGES & HOT DOGS
3313098	JOHNNIE’S DOG HOUSE
3435043	HOUSE OF DOGGS
3542782	DEE DEE'S DOG HOUSE
3542783	DEE DEE'S DOG HOUSE
3225021	THE DAWG HOUSE GRILL ALL AMERICAN FAVORITES
4052389	MAUI'S DOG HOUSE
4082640	DADDY'S DOG HOUSE YUMM WHERE "OUR DOGS SPEAK FOR THEMSELVES"
3945765	LINKHÄUS
4173267	BRAT HAUS

4397200 NEW YORK DOG HOUSE

4450634 BURGERHAUS

See also other prior registered third party marks, e.g.:

1170638 DER DOG HAUS

1139310 LARRY'S DAWG HOUSE

1686894 CHICAGO DOG HOUSE

1529020 VERN'S DOG HOUSE

33. The mark shown in the Subject Registration fails to create a commercial impression that indicates the source of the services associated with the mark. Instead the term only serves to identify characteristics and features of the restaurant services used by Petitioner, Respondent and many other third parties who serve German style hot dogs, frankfurters, sausages, and bratwurst. As such, the referenced wording is merely descriptive because it merely reflects the nature or subject matter of some or all of the Respondent's services. *See In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Newport Fastener Co. Inc.*, 5 USPQ2d 1064, 1067 n. 4 (TTAB 1987); TMEP §1213.08(c). The designation DOG HAUS cannot be perceived by the public as a service mark reasonably, let alone exclusively identifying the source of the Respondent's services.

34. The mark shown in the Subject Registration does not function as a service mark. Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. Sections 1051, 1052, 1053 and 1127. It neither identifies nor distinguishes the services of the applicant from those of others nor indicates their source. *In re Moody's Investors Service Inc.*, 13 USPQ2d 2043 (TTAB 1989); *In re Signal Companies, Inc.*, 228 USPQ 956 (TTAB 1986); *In re Hughes Aircraft Co.*, 222 USPQ 263 (TTAB 1984); TMEP sections 1301.02(a).

35. The Subject Registration is being misused to prevent others, including the Petitioner who provide restaurant services from using its own Registration for HUND & BIER HAUS and from fair and nominative use of the common descriptive terms "DOG" and "HAUS" without facing

a legal challenge from the Respondent. If, as alleged by Respondent's counsel in its recent "cease and desist" letter there is a likelihood of confusion between the Subject Registration and Petitioners' use of the apt and common descriptor DOG HAUS, then Petitioner's will be damaged and injured by reason of such Registration, inasmuch as endows the Respondent with at least the prima facie right to use the mark, and to further threaten and perhaps even pursue litigation against Petitioner's as based upon the color of authority thereon. Potential registrars of merely descriptive terms may be opposed and damaged assumed when the mark sought to be registered is descriptive of goods and opposer has a sufficient real interest in using the same descriptive words in its business. *DeWalt, Inc. v. Magna Power Tool Corp.*, 289 F.2d 656, 129 USPQ 275, 280 (CCPA 1961).

36. The Petitioner is harmed by the Subject Registration because Petitioner is unable to freely offer its own goods and services without facing a challenge from Respondent for alleged infringement of the Subject Registration.

37. If the Respondent is permitted to continue to maintain the Subject registration on the Principal Register, the same may be deemed incontestable after five (5) years from the date of registration, and Respondent would thereby obtain an incontestable right to use the mark in commerce. Further, the continued registration casts a cloud upon Petitioner's own rights to fairly and in good faith continue to use the generic, merely descriptive and functional terms "DOG" and "HAUS" in the United States. Such registration is therefore and would remain as a source of damage and injury to the Petitioner.

36. For the foregoing reasons, Petitioner is entitled to an order cancelling the Subject Registration.

Second Basis for Cancellation

The Subject Registration was obtained by Fraud

37. Petitioner incorporates by reference all prior paragraphs in this Petition for Cancellation.

38. Upon information and belief, the Subject Registration was obtained fraudulently in that the formal application papers signed on August 2, 2011, specifically alleged, *inter alia*:

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, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; 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.

39. Upon information and belief, such Statement was false, in that Respondent actually knew, and from the publicly available records of the USPTO should have known that many other persons, firms, corporations, or associations each have used the common descriptive terms DOG and HAUS in connection with restaurant services and failed to disclose such material information. Moreover, Respondent either knew or should have known that other third parties had the right (including prior registered exclusive rights) to use the mark DOG HAUS in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, such that Respondent's use may likely cause confusion, mistake, or deceive the public and failed to disclose such information.

40. Upon information and belief, the Statement was made by the Respondent's attorney, an authorized agent of Respondent with the knowledge and belief that the statement was false and at a time when the Respondent knew that said statement was false. Said false statement was made with the intent to induce authorized agents of the U.S. Patent & Trademark Office (USPTO) to grant said registration, and reasonably relying on upon the truth of said false statements, the USPTO did, in fact, grant said registration.

41. Upon information and belief, the Subject Registration was further obtained fraudulently in that sole specimen in support of the application filed, by Respondent under notice of Section 1001 of Title 18 of the United States Code, stated that the specimen in support of the application showed the mark as actually used by Applicant in connection with the enumerated services. Said statement was false in that the specimen provided did not show the mark as it was being used by or on behalf of Respondent and further falsely stated the date(s) of first use therein alleged. Upon information and belief, Respondent had not properly used the mark in commerce in connection with the services on the date of October 2010, as alleged and was further aware that the specimen of use was false, fraudulent, or otherwise plainly insufficient to show use of the mark in commerce, in connection with the services.

42. Petitioner alleges that the United States Trademark Office relied upon and erred in accepting the Statement. Due to the materiality of the knowingly false, fraudulent, misleading and incomplete information contained in the Respondent's Application, the Subject Registration is *void ab initio* and should be cancelled.

43. If, as alleged in the cease and desist letter sent by Respondent to Petitioner, there is a likelihood of confusion between the Subject Registration and Petitioners' use of the descriptive designations, if any, then Petitioner will be damaged and injured by reason of such Registration, inasmuch as the Subject Registration endows the Respondent with at least the prima facie right to

use the DOG HAUS mark, and to further threaten and perhaps even pursue litigation against Petitioner as based upon the color of authority thereon.

44. If the Respondent is permitted to continue to maintain its invalid registration, the same may be deemed incontestable after five (5) years from the date of registration, and Respondent would thereby obtain an incontestable right to use the mark in commerce. Further, the continued registration casts a cloud upon Petitioner's own rights and in light of unequivocal threats made by Respondent to Petitioner, the Subject Registration is therefore and would remain as a source of damage and injury to the Petitioner.

45. For the foregoing reasons, Petitioner is entitled to an order cancelling the Subject Registration.

WHEREFORE, Petitioner respectfully requests and order granting this Petition for Cancellation and that the Board enter an Order cancelling Registration No. 4,326,591.

The fee of \$300.00 required by Section 2.6(a)(16) is enclosed herewith.

Respectfully submitted,

ANDERSON & ASSOCIATES

Dated: April 25, 2014

by: /StephenLAnderson/

Stephen L. Anderson
Attorney for Petitioner, CARNEVOR, INC.
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Temecula, CA 92590
Telephone (951) 296-1700
Facsimile (951) 296-2456

Certificate of Service

I hereby certify that on the date set forth below, a copy of the foregoing PETITION FOR CANCELLATION is being sent via first-class mail, postage prepaid, to the Respondent at its address of record namely:

Dog Haus LLC
Suite 104
105 N. Hill Street
Pasadena, CALIFORNIA 91106

and to the address of its correspondent attorney of record, namely:

ANTONIO DE CARDENAS
DE CARDENAS LAW GROUP APLC
199 S LOS ROBLES AVE
SUITE 440
PASADENA, CALIFORNIA 91101 4645

and to an attorney who I believe to be representing the Respondent, namely:

Chet H. Olsen, Esq.
ROBERTSON & OLSEN, LLP,
9696 Culver Boulevard, Suite 302,
Culver City, California 90232

Dated: April 25, 2014

By: /StephenLAnderson/
Stephen L. Anderson