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Filing date: **04/27/2014**

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	Town Pump, Inc.		
Entity	Corporation	Citizenship	Montana
Address	600 South Main Butte, MT 59701 UNITED STATES		

Correspondence information	Antoinette M. Tease Antoinette M. Tease, P.L.L.C. PO Box 51016 Billings, MT 59105 UNITED STATES toni@teaselaw.com Phone:4062949000		
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**Registration Subject to Cancellation**

Registration No	4328612	Registration date	04/30/2013
Registrant	King Show Games Inc. Suite 100 Minnetonka, MN 55305 UNITED STATES		

**Goods/Services Subject to Cancellation**

<p>Class 009. First Use: 2013/01/22 First Use In Commerce: 2013/01/22 All goods and services in the class are cancelled, namely: Gambling machines; Gaming devices, namely, gaming machines, slot machines, bingo machines, with or without video output; Gaming equipment, namely, slot machines with or without video output; Gaming machines; Gaming machines featuring a device that accepts wagers; Gaming machines including slot machines or video lottery terminals; Gaming machines that generate or display wager outcomes; Gaming machines, namely, slot machines and video lottery terminals; Gaming machines, namely, devices which accept a wager; Gaming machines, namely, electronic slot and bingo machines; Gaming software that generates or displays wager outcomes of gaming machines; Slot machines</p>
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	86250700	Application Date	04/13/2014
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	MAGIC DIAMOND CASINOS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2004/06/01 First Use In Commerce: 2004/06/01 Casinos; Entertainment services, namely, casino gaming; Gaming services in the nature of casino gaming; Providing casino services featuring a casino players rewards program

U.S. Application No.	86250706	Application Date	04/13/2014
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	MAGIC DIAMOND CASINOS
Design Mark	
Description of Mark	The mark consists of an illustration of a diamond surrounded by the words "MAGIC DIAMOND CASINOS".
Goods/Services	Class 041. First use: First Use: 2010/08/31 First Use In Commerce: 2010/08/31 Casinos; Entertainment services, namely, casino gaming; Gaming services in the nature of casino gaming; Providing casino services featuring a casino players rewards program

Attachments	86250700#TMSN.jpeg( bytes ) 86250706#TMSN.jpeg( bytes ) Petition.pdf(1632646 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	/Antoinette M. Tease/
Name	Antoinette M. Tease
Date	04/27/2014

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

TOWN PUMP, INC.	)	
	)	Proceeding No. _____
Petitioner,	)	
	)	Trademark: MAGIC DIAMOND
v.	)	
	)	Registration No. 4328612
KING SHOW GAMES INC.,	)	
	)	Registration Date: April 30, 2013
Registrant.	)	
_____	)	

PETITION TO CANCEL

TOWN PUMP, INC., a Montana corporation with its principal place of business at 600 South Main, Butte, Montana 59701 (the “Petitioner” or “Town Pump”), has been damaged and believes it will continue to be damaged by the registration of the mark shown in U.S. Trademark Registration No. 4328612 and hereby seeks cancellation of this registration.

To the best of Petitioner’s knowledge, the name and address of the current owner of the registration are: KING SHOW GAMES INC., a Minnesota corporation with its principal place of business at 10275 Wayzata Blvd., Minnetonka, Minnesota 55305 (the “Registrant” or “King Show Games”).

The grounds for cancellation are as follows:

1. On April 13, 2014, Town Pump filed U.S. Trademark Application No. 86250700 for the MAGIC DIAMOND CASINOS word mark. This application covers the following services in International Class 041: Casinos; Entertainment services,

namely, casino gaming; Gaming services in the nature of casino gaming; Providing casino services featuring a casino players rewards program. The date of first use of this mark in interstate commerce is at least as early as June 1, 2004.

2. On April 13, 2014, Town Pump filed U.S. Trademark Application No. 86250706 for the following stylized mark:



This application covers the following services in International Class 041: Casinos; Entertainment services, namely, casino gaming; Gaming services in the nature of casino gaming; Providing casino services featuring a casino players rewards program. The date of first use of this mark in interstate commerce is at least as early as August 31, 2010.

3. In late 2008 and early 2009, two of Town Pump's previous federal trademark registrations for the MAGIC DIAMOND CASINOS logo and the MAGIC DIAMOND word mark had been canceled *not* due to abandonment of the mark but because of Town Pump's inadvertent failure to file the requisite renewal affidavits. These registrations were U.S. Trademark Registration Nos. 2534319 and 2588553, respectively. U.S. Trademark Registration No. 2534319 covered casino services in International Class 041 and lounge and bar services in International Class 042. U.S.

Trademark Registration No. 2588553 covered casino services in International Class 041 and cocktail lounge services in International Class 042.

4. King Show Games filed U.S. Trademark Application No. 77958718 for the MAGIC DIAMOND word mark on March 15, 2010. This application covered the following goods in International Class 009: Gambling machines; Gaming devices, namely, gaming machines, slot machines, bingo machines, with or without video output; Gaming equipment, namely, slot machines with or without video output; Gaming machines; Gaming machines featuring a device that accepts wagers; Gaming machines including slot machines or video lottery terminals; Gaming machines that generate or display wager outcomes; Gaming machines, namely, slot machines and video lottery terminals; Gaming machines, namely, devices which accept a wager; Gaming machines, namely, electronic slot and bingo machines; Gaming software that generates or displays wager outcomes of gaming machines; Slot machines. U.S. Trademark Registration No. 4328612 for the MAGIC DIAMOND word mark issued on April 30, 2013. King Show Games' claimed date of first use of this mark in interstate commerce is January 22, 2013.

5. On January 12, 2012, Town Pump filed two federal trademark applications for the MAGIC DIAMOND word mark (Serial No. 85515210) and the MAGIC DIAMOND CASINO logo (Serial No. 85515229). Both of these applications covered the following services:

International Class 041: Casinos; Entertainment services, namely, casino gaming; Gaming services in the nature of casino gaming; Leasing of electronic gaming machines; Providing casino services featuring a casino players rewards program; and

International Class 043: Bar services; Cocktail lounge services; Wine bars.

These two applications were refused registration on the basis of likelihood of confusion with U.S. Trademark Registration No. 4328612 for the MAGIC DIAMOND word mark.

6. In anticipation of this cancellation proceeding, Town Pump elected to let the two federal trademark applications referenced in paragraph 5 above go abandoned and to re-file two new applications for the MAGIC DIAMOND CASINOS word mark and logo so that it could be more precise about the documentable date of first use in interstate commerce. Town Pump anticipates that U.S. Trademark Registration No. 4328612 will be cited against both of these applications as well.

7. Town Pump has used the MAGIC DIAMOND CASINOS word mark continuously in interstate commerce, and has not abandoned this mark, since at least as early as June 1, 2004. Town Pump has used the MAGIC DIMAOND CASINOS logo that is the subject of Serial No. 86515229 continuously in interstate commerce, and has not abandoned this mark, since at least as early as August 31, 2010.

8. King Show Games' registration of the MAGIC DIAMOND mark was in bad faith because Town Pump had not abandoned its MAGIC DIAMOND marks, and a simple Internet search would have confirmed that these marks were still in use.

9. Town Pump has been damaged and will continue to be damaged as long as U.S. Trademark Registration No. 4328612 prevents Town Pump from registering its marks.

COUNT I  
(PRIORITY OF USE AND LIKELIHOOD OF CONFUSION)  
(15 U.S.C. §1052(d))

10. Town Pump incorporates by reference paragraphs 1–9 above as if fully set forth herein.

11. The goods and services covered in U.S. Trademark Registration No. 4328612 are either identical to or closely related to the services covered in U.S. Trademark Application Nos. 86250700 and 86250706.

12. The mark that is the subject of U.S. Trademark Registration No. 4328612 is identical or virtually identical to the marks that are the subject of U.S. Trademark Application Nos. 86250700 and 86250706 (collectively, the “Town Pump Marks”) and is, therefore, likely to cause confusion, or to cause mistake, or to deceive when used in connection with the goods and services covered in U.S. Trademark Registration No. 4328612.

13. Upon information and belief, the mark that is the subject of U.S. Trademark Registration No. 4328612 has caused actual confusion, mistake and deception among consumers in the gaming industry. Furthermore, the U.S. Patent and Trademark Office has already found that there is a likelihood of confusion between the Town Pump Marks, on the one hand, and the MAGIC DIAMOND mark that is the subject of U.S. Trademark Registration No. 4328612, on the other hand.

14. Town Pump has invested a substantial amount of time, effort and money in creating goodwill surrounding the Town Pump Marks.

15. Registration and use of the MAGIC DIAMOND mark by King Show Games constitutes a deliberate misappropriation of the goodwill created by town Pump in connection with the Town Pump Marks.

16. King Show Games has no license, consent or permission from Town Pump to use or register the MAGIC DIAMOND mark.

17. The continuous registration of the mark covered by U.S. Trademark Registration No. 4328612 is causing injury to Town Pump, its business, reputation and goodwill, and will continue to cause injury to Town Pump, its business, reputation and goodwill until the registration is canceled.

\* \* \*

WHEREFORE, Town Pump prays that this Petition to Cancel be sustained in its entirety in favor of Town Pump and that Registration No. 4328612 be canceled. Town Pump submits herewith a payment to cover its filing fee of \$300.00, as required by 37 C.F.R. § 2.6(a)(16).

Dated: April 27, 2014

Respectfully submitted,

/Antoinette M. Tease/

Antoinette M. Tease  
ANTOINETTE M. TEASE, P.L.L.C.  
Attorney for Petitioner  
PO Box 51016  
Billings, MT 59105  
(406) 294-9000  
Registration No. 53860

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing PETITION TO CANCEL is being served on April 27, 2014, by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to the correspondence address for the Registrant, at:

Bradley Berman  
King Show Games, Inc.  
10275 Wayzata Blvd., Suite 100  
Minnetonka, MN 55305

/Antoinette M. Tease/  
Antoinette M. Tease