

ESTTA Tracking number: **ESTTA608311**

Filing date: **06/05/2014**

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	MWR Holdings, LLC		
Entity	limited liability company	Citizenship	Delaware
Address	4855 Technology Way, Suite 700 Boca Raton, FL 33431 UNITED STATES		

Attorney information	Elliot Lipins Tutunjian & Bitetto, P.C. 425 Broadhollow Road, Suite 302 Melville, NY 11747 UNITED STATES trademarks@tb-iplaw.com, elliot@tb-iplaw.com Phone:631-844-0080		
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Registration Subject to Cancellation

Registration No	3700403	Registration date	10/20/2009
Registrant	Stoner, Theodore A 99 S. Downing St. #501 Denver, CO 80209 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 2004/06/08 First Use In Commerce: 2008/06/18 All goods and services in the class are cancelled, namely: Entertainment in the nature of live theatrical performances by mixed media of live characters, puppetry and animation for children; Organizing cultural events for children; Education services, namely, providing professional training in the field of bilingual learning
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Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86146757	Application Date	12/18/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BONGO BEAR		

Design Mark	BONGO BEAR
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2003/03/01 First Use In Commerce: 2003/03/01 ENTERTAINMENT SERVICES, NAMELY LIVE THEATRICAL PERFORMANCES FEATURING ELECTRONICALLY ANIMATED CHARACTERS FOR USE IN CHILD DEVELOPMENT AND PERSONAL APPEARANCES BY A COSTUMED CHARACTER

Attachments	86146757#TMSN.jpeg(bytes) Petition to Cancel.pdf(319711 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	/Elliot Lipins/
Name	Elliot Lipins
Date	06/05/2014

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

In the matter of U.S. Trademark Registration No. 3,700,403

For the mark "BONGO BI-LINGO BUDDY"

Registration Date: October 20, 2009

-----X)	
MWR Holdings, LLC)	
)	
Petitioner,)	Cancellation No.
)	
v.)	
)	
Theodore A. Stoner,)	
)	
Respondent.)	
-----X)	

PETITION TO CANCEL

Petitioner MWR Holdings, LLC (“Petitioner”) believes that it is being harmed and damaged by the continued existence of U.S. Trademark Reg. No. 3,700,403 of October 20, 2009 for the mark “BONGO BI-LINGO BUDDY” for "Entertainment in the nature of live theatrical performances by mixed media of live characters, puppetry and animation for children; Organizing cultural events for children; Education services, namely, providing professional training in the field of bilingual learning”, in Class 41. Petitioner accordingly petitions for the cancellation thereof, and pleads as follows:

1. Petitioner is a limited liability company organized under the laws of Delaware having a business address of 4855 Technology Way, Suite 700, Boca Raton, Florida 33431.
2. Upon information and belief, Theodore A. Stoner (“Respondent”) is an individual having an address of 99 S. Downing St. #501, Denver, Colorado 80209.
3. Respondent is the registrant of record for Reg. No. 3,700,403 of October 20, 2009 for the mark “BONGO BI-LINGO BUDDY” for "Entertainment in the nature of live theatrical

performances by mixed media of live characters, puppetry and animation for children; Organizing cultural events for children; Education services, namely, providing professional training in the field of bilingual learning”, in Class 41 (the "'403 Registration"). The application which matured into the '403 Registration was filed on February 10, 2006 based on an intent to use under Section 1(b). Respondent asserted an actual first date of use in commerce of June 18, 2008. Respondent's date of constructive use of the mark is February 10, 2006.

4. Petitioner is the owner of the mark "BONGO BEAR" for "Entertainment services, namely live theatrical performances featuring electronically animated characters for use in child development and personal appearances by a costumed character" in Class 041 (the "Petitioner's Services"). Petitioner has continuously used its "BONGO BEAR" mark in commerce for Petitioner's Services since March 1, 2003. Petitioner's Services were first used in commerce before Respondent's constructive or actual usage of the mark in the '403 Registration.

5. Petitioner has filed Application Serial No. 86/146,757 for registration of its BONGO BEAR mark for the Petitioner's Services (the "Petitioner's Application").

6. The U.S. Patent and Trademark Office has issued a Section 2(d) rejection of Petitioner's Application based upon a likelihood of confusion with the Respondent's mark in the '403 Registration.

7. The mark in the '403 Registration "BONGO BI-LINGO BUDDY" is confusingly similar to the mark "BONGO BEAR" in Petitioner's Application, and is for services that are identical or closely related to Petitioner's Services.

8. Petitioner has continuously used and is using its mark BONGO BEAR for Petitioner's Services from a time prior to Respondent's constructive and actual first date of use of the mark in the '403 Registration.

9. The continued existence of the '403 Registration is likely to cause harm and damage to Petitioner in that it falsely represents to the public that Respondent has rights in and to the mark in the '403 Registration inconsistent with those of Petitioner as a prior user, and in that there is a false presumption of rights in the Respondent associated with the '403 Registration, which is inconsistent with Petitioner's superior rights. In addition, the existence of the '403 Registration falsely suggests to the public that, by virtue of the registration, there is an association between Petitioner and Respondent, or that services marketed by Respondent under the mark "BONGO BI-LINGO BUDDY" are in some manner associated with Petitioner, when they are not.

10. The continued existence of the '403 Registration is likely to cause further harm and damage to Petitioner in that Petitioner will be wrongfully prevented from registering the mark in Petitioner's Application, all to the detriment of Petitioner.

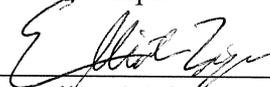
11. As a further grounds for cancellation, Petitioner asserts, upon information and belief, that Respondent has abandoned the mark by discontinuing its use of the mark with an intent not to resume such use.

WHEREFORE, the Petitioner prays that the present petition be granted and Reg. No. 3,700,403 be cancelled, and that Petitioner be granted such other relief as may be warranted.

Melville, New York
June 5, 2014

Respectfully submitted,

Elliot W. Lipins

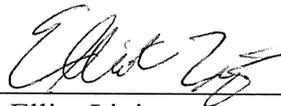


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CERTIFICATE OF SERVICE

It is hereby certified that on June 5, 2014, a true copy of the foregoing Petition to Cancel is being served by first-class mail, postage prepaid, to Respondent at the following address:

Theodore A. Stoner
99 S. Downing St. #501
Denver, Colorado 80209

By:  _____
Elliot Lipins