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Filing date: **06/19/2014**

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	Gracie Industries, LLC d/b/a Bolt Custom Trucks		
Entity	Corporation	Citizenship	Ohio
Address	1125 Perry Street Defiance, OH 43512 UNITED STATES		

Attorney information	April L. Besl Dinsmore & Shohl LLP 255 East Fifth Street Suite 1900 Cincinnati, OH 45202 UNITED STATES april.besl@dinsmore.com Phone:513-977-8527		
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Registration Subject to Cancellation

Registration No	2695073	Registration date	03/11/2003
Registrant	SPORTCHASSIS, LLC 2300 SOUTH 13TH STREET CLINTON, OK 73601 UNITED STATES		

Goods/Services Subject to Cancellation

Class 012. First Use: 1998/10/23 First Use In Commerce: 1998/10/23 All goods and services in the class are cancelled, namely: TRUCK SLEEPER CABS AND TRUCK BODIES
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	BENTZ Petition for Cancellation.pdf(35224 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	/april l besl/
Name	April L. Besl

Date	06/19/2014
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Reg. No.: 2,695,073
Reg. Date: March 11, 2003
Application Serial No. 76/348,760
Application Filing Date: December 17, 2001
Mark: BENTZ
Class: 012

Gracie Industries LLC

Petitioner,

v.

Sportchassis, LLC

Respondent.

Cancellation No. _____

PETITION FOR CANCELLATION

Petitioner, Gracie Industries LLC d/b/a Bolt Custom Trucks (hereinafter "Petitioner"), a limited liability company of the State of Ohio, having a place of business at 1125 Perry Street, Defiance, Ohio 43512, believes that it has been damaged, and will continue to be damaged by Registration No. 2,695,073 and hereby petitions to cancel same on the grounds and for the reasons set forth below.

GROUND FOR CANCELLATION OF REG. NO. 2,695,073

As grounds for its Petition to cancel U.S. Registration No. 2,695,073 it is alleged that Respondent perpetuated fraud on the Trademark Office by Respondent's misrepresentations and fraud concerning Respondent's use in commerce of the BENTZ trademark that is the subject of this cancellation proceeding. It is further alleged that the subject registration should be cancelled because Respondent has abandoned the BENTZ mark through nonuse without intent to resume use for over three years. Finally, it is alleged that Respondent acquired the BENTZ mark

pursuant to an assignment in gross and therefore the BENTZ mark has been abandoned and Registratoin No. 2,695,037 is subject to cancellation.

STATEMENT OF FACTS

In support for the instant Petition to Cancel, Petitioner alleges as follows:

1. Upon information and belief, Respondent SportChassis, LLC (hereinafter “Respondent”) is a limited liability company of the state of Oklahoma with an address of 2300 South 13th Street, Clinton, Oklahoma 73601.

2. Upon information and belief, Respondent is the owner of record of Registration No. 2,695,073 for the mark BENTZ, registered on March 11, 2003, in connection with “truck sleeper cabs and truck bodies” in Class 012 (“BENTZ Registration”).

3. Upon information and belief, Respondent’s registration is based on use of the trademark BENTZ in U.S. commerce and a use-based application filed on December 17, 2001.

4. Upon information and belief, Respondent’s BENTZ Registration was obtained through the assertion under oath in connection with the prosecution of BENTZ application, that the date of first use was October 23, 1998.

5. Upon information and belief, Bentz Transport Products, Inc. (“Bentz Transport Products”), was at one time a corporation of the State of Indiana, having an address of 4532 Allen Martin Drive, Fort Wayne, Indiana.

6. Upon information and belief, Bentz Transport Products was the owner of record of the BENTZ Registration from the time the application was filed until March 26, 2014.

7. Upon information and belief, Bentz Transport Products assigned the entire interest and goodwill in the BENTZ Registration to Respondent on March 26, 2014 and Respondent is the current owner of record of the BENTZ Registration.

8. Upon information and belief, Bentz Transport Products filed a Combined Sections 8 and 9 Declaration/Application for Renewal of Registration for the BENTZ Registration on October 12, 2012 and this renewal was granted by the Trademark Office on November 9, 2012.

9. Upon information and belief, Bentz Transport Products alleged in its renewal application that it was using the mark in commerce or in connection with the “truck sleeper cabs and truck bodies” as identified in Respondent’s application. Bentz Transport Products provided a specimen of the BENTZ mark which it allegedly affixed to the truck bodies it was asserted to be actively manufacturing at the time of filing.

10. Petitioner is the owner of U.S. Trademark Application Serial No. 86/310,244 for the mark BENTZ, in connection with “truck sleeper cabs and truck bodies” filed on June 16, 2014 (“Petitioner’s Application”). Petitioner’s Applicant is based on a bona fide intent to use the mark in commerce in connection with the listed goods.

11. Given the similarity of the marks and overlapping goods at issue, Petitioner anticipates upon examination that an Office Action will be issued on the grounds of likelihood of confusion under Section 2(d) on the basis of Respondent’s BENTZ Registration. As such, Petitioner has standing to bring this proceeding.

RESPONDENT’S FRAUD ON THE TRADEMARK OFFICE

12. Upon information and belief, Respondent’s predecessor in interest committed knowing and intentional fraud on the United States Patent and Trademark Office in the filing and renewal of Respondent’s BENTZ Registration by asserting it was still using the BENTZ Registration for truck sleeper cabs and truck bodies when in fact this mark was not being used and had not been used, in commerce since August 2009.

13. At the time of filing its Section 8 and 9 Declaration and Renewal, Respondent's predecessor in interest asserted that it was using the BENTZ mark in commerce in connection with "truck sleeper cabs and truck bodies." Upon information and belief, this assertion and representation made by Bentz Transport Products to the Trademark Office was false because Bentz Transport Products, Inc. was not in operation and had, in fact, gone out of business completely in August 2009 after all of the company's assets were liquidated by secured creditors. Petitioner has attached an article detailing out the closing of Bentz Transport Products, Inc. as Exhibit A.

14. In its renewal filing on October 12, 2012, Bentz Transport Products alleged that it was making use of the subject mark in interstate commerce sufficient to support a federal trademark renewal for the BENTZ Registration. However, upon information and belief, Bentz Transport Products, Inc. was not in operation and had seen all assets and goodwill liquidated in August 2009. Therefore, upon information and belief, the company could not have been making any trademark use of the BENTZ Registration or offering any "truck sleeper cabs and truck bodies" to support the renewal.

15. As the current owner of the BENTZ Registration, Respondent is the owner of a registration that was obtained on the basis of fraud in the procurement.

16. Therefore, on the basis of fraud in the procurement, Respondent's BENTZ Registration should be cancelled pursuant to Section 14 of the Trademark Act, 15 U.S.C. § 1064 *et seq.*

RESPONDENT HAS ABANDONED THE MARKS

17. Upon information and belief, Respondent's BENTZ Registration was abandoned long before Respondent took ownership of the mark and remains abandoned.

18. Upon information and belief, Respondent is not currently manufacturing any goods under the BENTZ Registration, including “truck sleeper cabs and truck bodies.”

19. Upon information and belief, Bentz Transport Products was liquidated in 2009 and ceased all operation of its business including the selling of “truck sleeper cabs and truck bodies,” the subject goods of the BENTZ Registration.

20. Upon information and belief, since 2009, Bentz Transport Products and Respondent have not offered any “truck sleeper cabs and truck bodies” under the trademark BENTZ, which is the subject of the BENTZ Registration.

21. Upon information and belief, Respondent and its predecessors in interest abandoned the BENTZ Registration by ceasing to use the mark without intent to resume use for approximately five years.

22. Accordingly, Respondent’s BENTZ registration should be cancelled pursuant to Section 14 of the Trademark Act, 15 U.S.C. § 1064 *et seq.*

THE TRANSFER OF OWNERSHIP WAS AN ASSIGNMENT IN GROSS

23. Upon information and belief, Bentz Transport Products assigned the entire interest and goodwill in the BENTZ Registration to Respondent on March 26, 2014.

24. Upon information and belief, Bentz Transport Products had been liquidated and ceased all operation in 2009 and had not sold any “truck sleeper cabs and truck bodies” under the BENTZ trademark from 2009 to March 26, 2014.

25. Upon information and belief, the assignment of rights by Bentz Transport Products and Respondent was made without the accompanying goodwill because the business itself had ceased operation and been liquidated.

26. Accordingly, Respondent's BENTZ registration should be cancelled pursuant to Section 14 of the Trademark Act, 15 U.S.C. § 1064 *et seq.*

PETITIONER HAS BEEN DAMAGED AND IS LIKELY TO CONTINUE TO BE DAMAGED BY THE REGISTRATION OF RESPONDENT'S MARK

27. Petitioner has been damaged and is likely to continue to be damaged because the continued existence of Respondent's BENTZ Registration impairs Petitioner's right to continue to use, develop, and expand the use of the mark BENTZ in the United States.

28. Petitioner has been damaged and is likely to continue to be damaged by the continued registration of Respondent's BENTZ registration because Respondent's continued ownership of the BENTZ mark is unlawful inasmuch as Respondent's BENTZ Registration was obtained fraudulently, Respondent renewed the registration in the name of the wrong owner, and Respondent has abandoned the mark that is the subject of the registration.

29. Petitioner has been damaged and is likely to continue to be damaged because the continued existence of Respondent's BENTZ Registration will, upon information and belief, block Petitioner's application to register BENTZ at the Trademark Office.

WHEREFORE, Petitioner prays that Registration No. 2,695,073 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Date: June 19, 2014

Respectfully submitted,

DINSMORE & SHOHL LLP

s/April L. Besl/

April L. Besl

Jennifer K. Miller

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d/b/a Bolt Custom Trucks

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Cancellation has been served upon the following by First Class mail this 19th day of June, 2014:

George Pappas
Pappas Law Office
919 S. Harrison Street
Harrison Place Suite 300
Fort Wayne, Indiana 46802

s/April L. Besl/
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