

ESTTA Tracking number: **ESTTA618876**

Filing date: **07/31/2014**

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	HD Investments, LLC		
Entity	limited liability company	Citizenship	Oklahoma
Address	3101 W. Tecumseh Suite 200 Norman, OK 73072 UNITED STATES		

Attorney information	Anthony J. Jorgenson Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. 100 N. Broadway Chase Tower, Suite 2900 Oklahoma City, OK 73102 UNITED STATES ajorgenson@hallestill.com Phone:4055532845		
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Registration Subject to Cancellation

Registration No	3711893	Registration date	11/17/2009
Registrant	Catalano, Heather L. 2037 Biron Street Mandeville, LA 70448 UNITED STATES		

Goods/Services Subject to Cancellation

Class 043. First Use: 1960/01/01 First Use In Commerce: 1960/01/01 All goods and services in the class are cancelled, namely: Bar and restaurant services
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Related Proceedings	None.
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Attachments	Reg. No. 3,711,893 Petition for Cancellation.PDF(2496713 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	/s/ Anthony J. Jorgenson
Name	Anthony J. Jorgenson

Date	07/31/2014
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 3,711,893

For the mark: **SMITTY'S CORNER**

Date registered: November 17, 2009

HD INVESTMENTS, LLC,
an Oklahoma limited liability company

Petitioner,

v.

No. _____

HEATHER CATALANO,
an individual

Registrant.

PETITION FOR CANCELLATION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

To Commissioner of Trademarks:

HD Investments, LLC, an Oklahoma limited liability company having a place of business at 3101 W. Tecumseh Road, Suite 200, Norman, Oklahoma 73072 ("Petitioner"), believes that it has been damaged and will continue to be damaged by U.S. Registration No. 3,711,893 for the mark **SMITTY'S CORNER** (the "Registered Mark") issued to Heather Catalano, an individual having an address at 2037 Biron Street, Mandeville, Louisiana 70448 ("Registrant"), and hereby petitions the Board for cancellation of same on the ground that the Registered Mark has been abandoned. To the best of Petitioner's knowledge, Registrant's address is the last known address for Registrant according to the U.S. Trademark Registration for the Registered Mark. In support of this Petition for Cancellation, Petitioner alleges the following:

1. U.S. Trademark Registration No. 3,711,892 for the mark **SMITTY'S CORNER** was issued to Registrant on November 17, 2009 for use in connection with "Bar and restaurant services" in International Class 043 (the "Registered Mark"). A copy of the U.S. Trademark Registration for the Registered Mark is attached hereto as Exhibit A.

2. On March 13, 2014, Petitioner filed an intent-to-use trademark application with the United States Patent and Trademark Office ("USPTO") for the mark **SMITTY'S GARAGE** burgers & beer (and design) in connection with "Bar services; Restaurant services" in International Class 043 (U.S. Application Serial No. 86/220,465) (hereafter "Petitioner's Mark").

3. On June 24, 2014, the USPTO issued an Office Action refusing federal registration of Petitioner's Mark in view of the Registered Mark on the ground of likelihood of confusion. 15 U.S.C. § 1052(d). While irrelevant to this Petition, the Office Action also requires that Petitioner amend the description of drawing which Petitioner will comply with in the event that the relief requested by this Petition is granted.

4. Upon information and belief and in accordance with 15 U.S.C. §§ 1064(3) and 1127, Registrant has abandoned the Registered Mark because she has completely ceased using the Registered Mark with no intent to resume use.

5. Upon information and belief, the address associated with the U.S. Trademark Registration for the Registered Mark is a residential address. Upon further information and belief, the business associated with the Registered Mark was located at 2529 Dauphine St., New Orleans, Louisiana 70117 ("Registrant's Business Address"). As evidenced by its Facebook page at <https://www.facebook.com/pages/Smitty's-Corner/203038750947>, Registrant's Business

Address is “permanently closed.” A true and correct copy of Registrant’s Facebook page is attached hereto as Exhibit B.

6. Additionally, Exhibit C to this Petition for Cancellation is a true and correct copy of a screen shot of Registrant’s Business Address taken from Google Earth at www.google.com/earth/. Indeed, the photograph shown in Exhibit C appears to be the same business location submitted Registrant’s specimen during prosecution of the Registered Mark before the USPTO attached hereto as Exhibit D. However, as evidenced by Exhibit C, Registrant’s business no longer exists at that location.

6. Finally, on July 25, 2014, Petitioner’s counsel attempted to call (504) 947-4200, the phone number identified on Exhibit B for the business associated with the Registered Mark. Petitioner’s counsel learned that Registrant’s phone number had been disconnected or was no longer in service.

7. Petitioner has been damaged and will continue to be damaged if the Registered Mark is allowed to remain on the Principal Register since the Registered Mark is preventing registration of Petitioner’s Mark.

WHEREFORE, and in view of Registrant’s abandonment of the **SMITTY’S CORNER** Mark and related federal registration, Petitioner prays that this Petition for Cancellation be sustained and that the federal trademark registration for the mark **SMITTY’S CORNER**, namely U.S. Registration No. 3,711,893, registered on November 17, 2009, be cancelled.

Respectfully submitted this 31st day of July, 2014.

/s/ Anthony J. Jorgenson

Julianna P. Deligans, OBA #19792
Anthony J. Jorgenson OBA #17074
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GOLDEN & NELSON, P.C.**
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Oklahoma City, OK 73102
Telephone (405) 553-2828
Facsimile (405) 553-2855

**ATTORNEYS FOR PETITIONER,
HD INVESTMENTS, LLC**

CERTIFICATE OF FILING

I hereby certify that this correspondence was filed electronically through the TTAB's ESTTA system on this 31st day of July, 2014.

/s/ Anthony J. Jorgenson

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 31st day of July, 2014, a true and correct copy of the above and foregoing **PETITION FOR CANCELLATION** was sent by U.S. Mail, with proper postage thereon fully paid, to:

Heather Catalano
2037 Biron Street
Mandeville, LA 70448

/s/ Anthony J. Jorgenson

United States of America

United States Patent and Trademark Office

SMITTY'S CORNER

Reg. No. 3,711,893 CATALANO, HEATHER L. (UNITED STATES INDIVIDUAL)
Registered Nov. 17, 2009 2037 BIRON STREET
MANDEVILLE, LA 70448

Int. Cl.: 43 FOR: BAR AND RESTAURANT SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

SERVICE MARK FIRST USE 1-1-1960; IN COMMERCE 1-1-1960.
PRINCIPAL REGISTER THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-721,054, FILED 4-23-2009.

JEFFREY LOOK, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT
A



Email or Phone

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Smitty's Corner

3.0 ★★★★★ (3 ratings)

44 likes · 1 was here

- Bar
- 2529 Dauphine St, New Orleans, Louisiana 70117
- (504) 947-4200
- Permanently Closed

About



Photos

Likes

44

Highlights

Smitty's Corner is on Facebook.

Revi To connect with Smitty's Corner



Sign Up

Log In

about 11 months ago ·



Lee Wayne Turner

★★★★★

over a year ago ·



Smitty's Corner created an event.
November 21, 2009



SAINTS PARTY
November 22, 2009 at 12:00pm
2529 DAUPHINE ST, NEW ORLEANS, LA



Smitty's Corner
November 19, 2009

WILL HAVE PLENTY MORE TO COM

Like · Comment

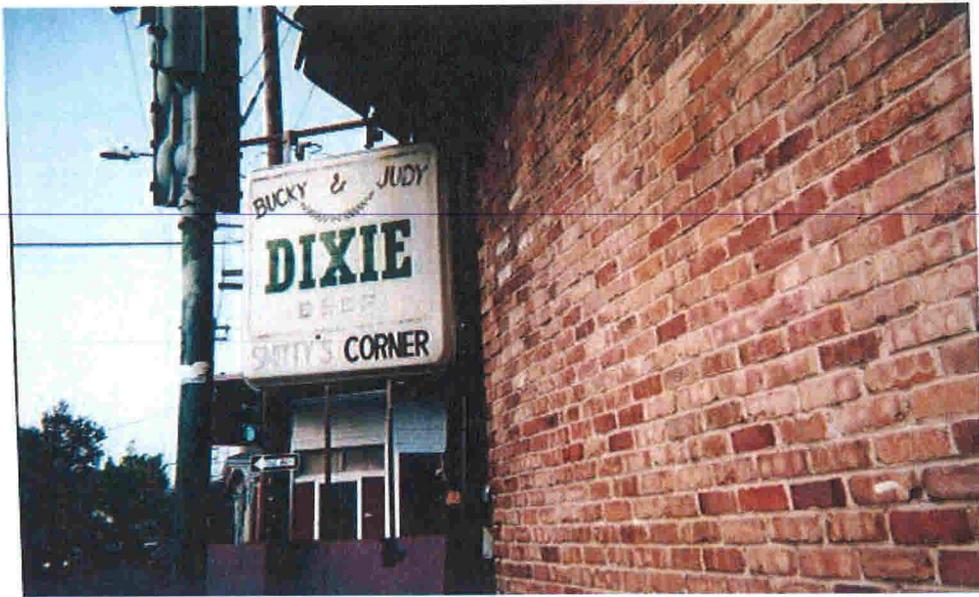




Google earth



EXHIBIT
C



**EXHIBIT
D**