

ESTTA Tracking number: **ESTTA628072**

Filing date: **09/18/2014**

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	Spoonjack LLC		
Entity	Limited Liability Company	Citizenship	California
Address	220 Lombard St. STE 217 San Francisco, CA 94111 UNITED STATES		

Correspondence information	Tom Scharfeld Spoonjack LLC 220 Lombard St. STE 217 San Francisco, CA 94111 UNITED STATES tas@spoonjack.com
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Registration Subject to Cancellation

Registration No	3391095	Registration date	03/04/2008
Registrant	Trump, Donald J. 725 Fifth Avenue New York, NY 10022 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 2004/01/08 First Use In Commerce: 2004/01/08 All goods and services in the class are cancelled, namely: Entertainment services, namely, ongoing-scripted television programs in the field of business, business disputes, and dispute resolution

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Related Proceedings	Opposition No. 91203345
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Attachments	can_trump_3391095.pdf(153587 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	/Tom Scharfeld/
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Name	Tom Scharfeld
Date	09/18/2014

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

SPOONJACK LLC d/b/a SPOONJACK,

Cancellation No. _____

Petitioner,

v.

DONALD J. TRUMP,

Reg. No. 3391095

Mark: TRUMP

Issued: March 4, 2008

Registrant.

PETITION TO CANCEL

Spoonjack, LLC ("Petitioner"), a California Limited Liability Company with a principal place of business at 220 Lombard St. STE 217, San Francisco, California, 94111, believes that it will be damaged by Registration No. 3391095 for the mark TRUMP, and hereby petitions to cancel the same.

As grounds for this Petition, it is alleged that:

1. Donald J. Trump ("Registrant") is the owner of Registration No. 3391095 for the mark TRUMP for "entertainment services, namely, ongoing unscripted television programs in the field of business, business disputes, and dispute resolution" in International Class 41, registered on March, 4 2008.
2. On January 12, 2012, Registrant filed a notice of opposition (Opposition No. 91203345) against Petitioner's application for the mark ITRUMP, Application No. 85/208,303, alleging likelihood of confusion, dilution, and false suggestion of a connection with Donald J. Trump.
3. In its notice of opposition, Registrant pleaded, *inter alia*, Registration No. 3391095 as a bar to the registration of Petitioner's mark.
4. On February 21, 2012, along with its answer to the notice of opposition, Petitioner filed a counterclaim to cancel, *inter alia*, Registration No. 3391095.
5. On February, 28, 2014, while Petitioner's counterclaim was pending, Registrant filed a Combined Declaration of Use and Incontestability under Sections 8 & 15 for Registration No. 3391095. In that filing Registrant represented to the PTO that

there was, at that time, no proceeding involving Registrant's right to register the mark, for the listed services, pending and not disposed of either in the Patent and Trademark Office or in the courts. Registrant verified such with a declaration pursuant to 37 C.F.R. §2.20.

6. On July 28, 2014, Registrant, through the same counsel representing him in proceeding no. 91203345 and while the proceeding was pending, filed a notice of opposition (Opposition No. 91217618) against Application Serial No. 86/116,800. In that opposition, Registrant claimed ownership of Registration No. 3391095 and claimed that the registration had "...become incontestable under Section 15 of the Lanham Act. 15 U.S.C. § 1065."
7. The representation Registrant made to the PTO on February 28, 2014 was false given that Petitioner's counterclaim to cancel Registration No. 3391095 was pending in proceeding no. 91203345.
8. Registrant knew that the representation was false.
9. Registrant knowingly made a material misrepresentation to the PTO in order to obtain incontestability for Registration No. 3391095, a right to which Registrant is not entitled.
10. Registrant knowingly made a material misrepresentation to the PTO in order to obtain incontestability for Registration No. 3391095, so that he could rely on it in dispute of the mark depicted in Application Serial No. 86/116,800.
11. Registrant knowingly made a material misrepresentation to the PTO in order to obtain incontestability for Registration No. 3391095, so that he could rely on it in dispute of Petitioner's mark depicted in Application Serial No. 85/208,303.
12. Registrant made the representation with the intent to deceive the PTO.
13. The PTO relied on the representation in issuing a Notice of Acceptance and Acknowledgment of the Sections 8 & 15 Declaration under TMEP §1605 on March 20, 2014.

14. The PTO would not have issued a Notice of Acceptance and Acknowledgment of the Sections 8 & 15 Declaration under TMEP §1605 but for Registrant's false representation.
15. Accordingly, Registrant's actions in the in the filing of its Sections 8 & 15 Declaration for Registration No. 3391095 constitute fraud.
16. For the foregoing reasons, continued registration of Registration No. 3391095 would be damaging to Petitioner.

WHEREFORE, Petitioner respectfully requests that the petition be granted and that Registration No. 3391095 be cancelled.

Respectfully submitted,

Date: September 18, 2014



Tom Scharfeld
President
Spoonjack LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing PETITION TO CANCEL was served on this 18th day of September, 2014, via first class mail, U.S. postal service, postage prepaid upon Registrant at Registrant's address of record, namely, Donald J. Trump, 725 Fifth Avenue, New York, NY 10022, and Registrant's Attorney of Record at their address of record:

Tamar Niv Bessinger
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017

By:/Tom Scharfeld/