

ESTTA Tracking number: **ESTTA628295**

Filing date: **09/19/2014**

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	Todd S White		
Entity	Individual	Citizenship	UNITED STATES
Address	77-203 Ho Omohala Rd. Kailua-Kona, HI 96740 UNITED STATES		

Attorney information	Luke Brean BreanLaw, LLC P.O. Box 4120, ECM #72065 Portland, OR 97211 UNITED STATES tmsupport@breanlaw.com, luke@breanlaw.com Phone:800-451-5815		
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Registration Subject to Cancellation

Registration No	3179987	Registration date	12/05/2006
Registrant	Pifer, Gary L 2356 Caddie Ct Oceanside, CA 92056 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2005/08/01 First Use In Commerce: 2005/08/01 All goods and services in the class are cancelled, namely: [clothing, namely, footwear, Sneakers, Skateboard Shoes,] t-shirts [, caps, jackets, dresses, hats]

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	CAN-PetitionToCancelAbandonment -- 3179987.pdf(288659 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	/LB/
Name	Luke Brean

Date	09/19/2014
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Todd Sean White
Petitioner,

Cancellation No.:

v.

Mark: RIPPER

Gary L Pifer
Respondent.

PETITION TO CANCEL

Petitioner, Todd Sean White (hereinafter, “Petitioner”) is citizen of the state of Hawaii, with a principal place of business at 77-203 Ho Omohala Rd., Kailua-Kona, Hawaii 96740 .

Todd Sean White believes he is being damaged by Registration No. 3179987for RIPPER covering “[clothing, namely, footwear, Sneakers, Skateboard Shoes,] t-shirts [, caps, jackets, dresses, hats] ,” in Class 025 and hereby petitions to cancel the registration of said mark.

As grounds in support for this Cancellation, Petitioner alleges the following:

1. Upon information and belief, the name of the current owner of the registration is Gary L Pifer with an address of 2356 Caddie Ct., Oceanside, California 92056 (“Respondent”).

2. On Sep. 18, 2014, Petitioner filed for U.S. Serial No. 86398765 for RIPPER in class 025 for Boots;

Boots for sport; Footwear; Gloves; Hats; Jackets; Pants; Shirts; Shoes; Snowboard gloves; Snowboard jackets; Snowboard pants; Surf wear and given the similarity of the marks and the applied for goods, anticipates that the United States Patent and Trademark Office will issue an Office Action for Petitioner's Application Serial No. 4310153 stating, *inter alia*, Registration of the applied-for mark is refused because of a likelihood of confusion with the mark(s) in U.S. Registration No(s). 3179987 Trademark Act Section 2(d), 15 U.S.C.A. § 1052(d); *see* TMEP §§ 1207.01 et seq. Thus the Petitioner is damaged.

COUNT I: ABANDONMENT

3. Petitioner repeats and incorporates herein by reference the averments in the preceding paragraphs.
4. Upon information and belief, Respondent has abandoned the mark RIPPER which is the subject of Registration No. 3179987.
5. Upon information and belief, Respondent discontinued use of the mark RIPPER on or in connection with the goods set forth in Registration No. 3179987 more than three years prior to Petitioner's filing this Petition, and Respondent's use of the Registered Mark has not resumed since such discontinuance.
6. Upon information and belief, Respondent's discontinuance of use of the mark RIPPER on or in connection with the goods set forth in Registration No. 3179987 was accompanied by Respondent's intent not to resume use the mark RIPPER on or in connection with such goods.

7. In view of the evidentiary presumptions that result from Registration No. 3179987 that should not be recognized given Respondent's abandonment of the mark in Registration No. 3179987, Petitioner will be damaged if Respondent is allowed to maintain such registration.

COUNT II: FRAUD ON THE TRADEMARK OFFICE

8. Petitioner repeats and incorporates herein by reference the averments in the preceding paragraphs.

9. Upon information and belief Registration No. 3179987 was fraudulently obtained by the Registrant. The specimen submitted on July 12, 2006 in response to an office action appears to be a digital rendering. Moreover, Registrants Jan 12, 2012 specimen submitted with its Section 8 renewal also appear to be a digital rendering. Upon information and belief these specimens at the time of filing were not rendered in interstate commerce as alleged by Registrant. As such, the Registrant did not qualify the mark for Federal Registration, and Registration No. 3179987 is invalid.

PRAYER FOR RELIEF

WHEREFORE, No. 3179987 be cancelled as it relates to the goods for which it is registered.

The filing fee of \$300 for this Petition to Cancel is being submitted electronically with this Petition.

Petitioner hereby appoints Luke Brean, of the law firm of BreanLaw, LLC, member of the Oregon bar, as its attorney with full power of substitution and revocation, to prosecute this cancellation proceeding, and to transact all business in the U.S. Patent and Trademark Office in connection herewith.

Dated: Sep. 19, 2014

Respectfully submitted,

/LB/
Luke Brean

BreanLaw, LLC
P.O. Box 4120
ECM #72065
Portland, Oregon 97208

luke@breanlaw.com
800-451-5815

Attorney for Applicant

CERTIFICATE OF SERVICE

This is to certify that a copy of this PETITION TO CANCEL, is being deposited with the U.S. Postal Service on Sep. 19, 2014 by first-class mail, postage prepaid to the counsel of record in an envelope addressed as follows:

Gary L Pifer
2356 Caddie Ct
Oceanside, California 92056

/LB/

Luke Brean

BreanLaw, LLC
P.O. Box 4120
ECM #72065
Portland, Oregon 97208

luke@breanlaw.com
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Dated: Sep. 18, 2014

Respectfully submitted,

/LB/
Luke Brean

BreanLaw, LLC
P.O. Box 4120
ECM #72065
Portland, Oregon 97208

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Gary L Pifer
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Oceanside, California 92056

/LB/

Luke Brean

BreanLaw, LLC
P.O. Box 4120
ECM #72065
Portland, Oregon 97208

luke@breanlaw.com
800-451-5815

Attorney for Applicant

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 3,179,987

Registered Dec. 5, 2006

**TRADEMARK
PRINCIPAL REGISTER**

Ripper

PIFER, GARY L (UNITED STATES INDIVIDUAL)
2356 CADDIE CT
OCEANSIDE, CA 92056

FOR: CLOTHING, NAMELY FOOTWEAR, SNEAKERS, SKATEBOARD SHOES, T-SHIRTS, CAPS, JACKETS, DRESSES, HATS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 8-1-2005; IN COMMERCE 8-1-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 78-687,136, FILED 8-6-2005.

JOHN DWYER, EXAMINING ATTORNEY

Trademark Electronic Application System (TEAS) filing receipt

1. **YOUR MARK:** RIPPER (Standard Characters, mark.jpg)
The literal element of the mark consists of RIPPER.
The mark consists of standard characters, without claim to any particular font, style, size, or color.
2. **YOUR SERIAL NUMBER:** We have received your U.S. Trademark Application and assigned serial number '86398765' to your submission. A summary of your application data is provided at the bottom of this message and serves as your official filing receipt. Please keep a copy of this information for your records. All correspondence concerning the application should reference your assigned serial number.

Please read all of the important information below. Not every mark is registrable with the USPTO and we do not refund the application filing fee(s) if a registration does not ultimately issue.

3. **RECEIVING E-MAIL COMMUNICATIONS/FILING DOCUMENTS ON-LINE:** If you have authorized receipt of correspondence by e-mail, please make sure that your server will accept USPTO e-mail and not treat it as SPAM. If you have not authorized communication by e-mail, please do so at any time by using the "Change of Correspondence Address" form, available at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>. If you must submit correspondence to us, please use the Trademark Electronic Application System (TEAS) forms, available at <http://www.uspto.gov/trademarks/teas/index.jsp>.
4. **KEEP YOUR ADDRESS CURRENT IN USPTO RECORDS:** We do not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must update the correspondence and/or owner's address if a postal address and/or e-mail address changes, using the form(s) available at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.
5. **WARNING ABOUT UNSOLICITED COMMUNICATIONS:** You may receive trademark-related communications from private companies not associated with the USPTO. These communications frequently display customer-specific information, including your USPTO serial number or registration number and owner name, and request fees for trademark-related services, such as monitoring, listings in international publications, and document filing. None of the companies offering these services are affiliated with the USPTO or any other federal agency. All official correspondence will be from the "United States Patent and Trademark Office" in Alexandria, VA, and if by e-mail, specifically from the domain "@uspto.gov." Please consult the "Warning" page on the Trademarks section of the USPTO's website for further information about unsolicited communications and to view representative examples of them. For general information on filing and maintenance requirements for trademark applications and registrations, including fees required by law, please consult www.uspto.gov, contact the TrademarkAssistanceCenter@uspto.gov or telephone 1-800-786-9199.
6. **LEGAL EXAMINATION PROCESS:** Your application is now pending examination. In

approximately 3 months, your application will be assigned to a USPTO examining attorney for review. The application cannot mature into a registration unless all legal requirements are met, and many applications never satisfy these requirements and therefore never register. The overall process can take up to 18 months.

7. **CHECK STATUS AND REVIEW DOCUMENTS OR YOUR APPLICATION MAY BE UNINTENTIONALLY ABANDONED:** You **must** check the status and review all documents associated with your application at least every 3-4 months using Trademark Status and Document Retrieval (TSDR), available at <http://tsdr.uspto.gov/>.

Promptly e-mail the TrademarkAssistanceCenter@uspto.gov or telephone 1-800-786-9199 (select option #1) if an Office action (letter from the USPTO) or notice has issued for your application that you did not receive or do not understand. Failure to respond timely to any Office action or notice may result in the abandonment of your application, requiring you to pay an additional fee to have your application revived even if you did not receive the Office action or notice.

8. **FILING ERRORS:** If you discover an error in the application data, you must file a Voluntary Amendment at <http://www.uspto.gov/trademarks/teas/miscellaneous.jsp>. Do **not** submit any proposed amendment to TEAS@uspto.gov, because the TEAS technical support team may not make any data changes. Please wait approximately 7 days after the filing date of your application to submit a Voluntary Amendment in order to allow for initial upload of your application data into the USPTO database. The assigned examining attorney will determine the acceptability of any Voluntary Amendment during examination. Not all errors may be corrected. For example, if you submitted the wrong mark or if the proposed correction would be considered a material alteration to your original filing, it will not be accepted. In this situation, your only recourse would be to file a new application, with a new fee and no refund of your original filing fee.
9. **REQUEST FOR REFUND AND/OR CANCELLATION:** Since your application has already been assigned a serial number, please do not contact TEAS@uspto.gov to request a refund or to cancel the filing. We will only cancel the filing and refund the filing fee if the application does not meet minimum filing requirements. The fee is a processing fee that the USPTO does not refund, even if your mark does not proceed to registration.

In the limited situation where you inadvertently filed identical applications, one immediately after the other, because no confirmation of the first filing was received, please provide both serial numbers to the technical support team at TEAS@uspto.gov.

10. **SelectUSA:** The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation, and commercialization of new technologies. The U.S. offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to promote and facilitate business investment. SelectUSA provides information assistance to the international investor community; serves as an ombudsman for existing and potential investors; advocates on behalf of U.S. cities, states, and regions competing for global investment; and counsels U.S. economic development organizations on investment attraction best practices. To learn more about why the United States is the best country in the world to develop technology, manufacture products, deliver services, and grow your business, visit SelectUSA.gov or call +1-202-482-6800.

SUMMARY OF APPLICATION DATA FOLLOWS:

APPLICATION DATA: Trademark/Service Mark Application, Principal Register TEAS Plus Application

The applicant, Todd Sean White, a citizen of United States, having an address of
77-203 Ho Omohala Rd.
Kailua-Kona, Hawaii 96740
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 025: Boots; Boots for sport; Footwear; Gloves; Hats; Jackets; Pants; Shirts; Shoes; Snowboard gloves; Snowboard jackets; Snowboard pants; Surf wear

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 028: Body boards; Paddle boards; Scuba fins; Skateboard decks; Skis; Snow boards; Surf boards; Wake boards

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant claims ownership of U.S. Registration Number(s) 4310153.

The applicant's current Attorney Information:

Luke Brean of BreanLaw, LLC
P.O. Box 4120 ECM #72065
Portland, Oregon 97208
United States

The applicant's current Correspondence Information:

Luke Brean
BreanLaw, LLC
P.O. Box 4120 ECM #72065
Portland, Oregon 97208
7815075700(phone)
tmsupport@breanlaw.com (authorized)

A fee payment in the amount of \$550 has been submitted with the application, representing payment for 2 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /LB/ Date: 09/18/2014

Signatory's Name: Luke Brean

Signatory's Position: Attorney of Record, Oregon State Bar

Signatory's Phone Number: 800-451-5815

Thank you,

The TEAS support team

Thu Sep 18 14:37:30 EDT 2014

STAMP: USPTO/FTK-67.160.174.160-20140918143730366501-86398765-

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