

ESTTA Tracking number: **ESTTA642995**

Filing date: **12/07/2014**

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	Town Pump, Inc.		
Entity	corporation	Citizenship	Montana
Address	600 S. Main Butte, MT 59701 UNITED STATES		

Attorney information	Antoinette M. Tease Antoinette M. Tease, P.L.L.C., PO Box 51016 Billings, MT 59105 UNITED STATES toni@teaselaw.com Phone:4062949000		
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Registration Subject to Cancellation

Registration No	4139115	Registration date	05/08/2012
Registrant	THE TOWN PUMP, INC. 220 S. Rio Vista Brawley, CA 92227 UNITED STATES		

Goods/Services Subject to Cancellation

Class 043. First Use: 1979/04/01 First Use In Commerce: 1979/04/01 All goods and services in the class are cancelled, namely: Restaurant and catering services

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	4249099	Application Date	01/12/2012
Registration Date	11/27/2012	Foreign Priority Date	NONE
Word Mark	TOWN PUMP		

Design Mark	<h1>Town Pump</h1>
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1953/02/01 First Use In Commerce: 1953/02/01 Retail convenience stores; Retail storeservices featuring a wide variety of consumer goods of others; Retail store services featuring convenience store items and gasoline Class 037. First use: First Use: 1953/02/01 First Use In Commerce: 1953/02/01 Charging station services for electric vehicles; Vehicle cleaning; Vehicle fueling services; Vehicle service stations; Vehicle washing

U.S. Registration No.	4267075	Application Date	01/12/2012
Registration Date	01/01/2013	Foreign Priority Date	NONE

Word Mark	TOWN PUMP
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Design Mark	
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Description of Mark	The mark consists of the text "town" inside a rectangular shape. Below that is the text "pump" inside a rectangular shape. Both of the rectangular shapes are surrounded by another rectangular shape.
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Goods/Services	Class 035. First use: First Use: 1977/07/01 First Use In Commerce: 1977/07/01 Retail convenience stores; Retail storeservices featuring a wide variety of consumer goods of others; Retail store services featuring convenience store items and gasoline Class 037. First use: First Use: 1977/07/01 First Use In Commerce: 1977/07/01 Charging station services for electric vehicles; Vehicle cleaning; Vehicle fueling services; Vehicle service stations; Vehicle washing
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Attachments	85515104#TMSN.png(bytes) 85515128#TMSN.png(bytes) Petition.pdf(1314638 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	/Antoinette M. Tease/
Name	Antoinette M. Tease
Date	12/07/2014

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

TOWN PUMP, INC.,)	Proceeding No. _____
)	
Petitioner,)	Trademark: THE TOWN PUMP
)	
v.)	Registration No. 4139115
)	
THE TOWN PUMP, INC.,)	Registration Date: May 8, 2012
)	
Registrant.)	
_____)	

PETITION TO CANCEL

TOWN PUMP, INC. (“Petitioner” or “Town Pump”), has been and believes it will continue to be damaged by the registration of the mark shown in U.S. Trademark Registration No. 4139115 and hereby seeks cancellation of this registration.

To the best of Petitioner’s knowledge, the name and address of the current owner of the registration are: THE TOWN PUMP, INC., a California corporation with its principal place of business at 220 S. Rio Vista, Brawley, California 92227 (“Registrant”).

The grounds for cancellation are as follows:

1. Town Pump owns U.S. Trademark Registration No. 4249099 for the TOWN PUMP word mark and U.S. Trademark Registration No. 4267075 for the TOWN PUMP logo. Both of these registrations cover: “Retail convenience stores; Retail store services featuring a wide variety of consumer goods of others; Retail store services featuring convenience store items and gasoline” in International Class 035; and “Charging station services for electric vehicles; Vehicle cleaning; Vehicle fueling

services; Vehicle service stations; Vehicle washing” in International Class 037. The respective dates of first use in interstate commerce for each of these registrations are February 1, 1953 and July 1, 1977.

2. Registrant owns U.S. Trademark Registration No. 4139115 for the word mark THE TOWN PUMP. This registration covers restaurant and catering services in International Class 043. The claimed date of first use in interstate commerce for this registration is April 1, 1979.

3. Town Pump has priority of use with respect to the TOWN PUMP mark because it has used this mark (both the word mark and the logo) continuously in interstate commerce longer than Registrant has used the mark THE TOWN PUMP in interstate commerce.

COUNT I
(PRIORITY OF USE AND LIKELIHOOD OF CONFUSION)
(15 U.S.C. §1052(d))

4. Town Pump incorporates by reference paragraphs 1–6 above as if fully set forth herein.

5. Town Pump has been using the TOWN PUMP word mark in interstate commerce in connection with the Registered Services since at least as early as February 1, 1953. Town Pump has been using the TOWN PUMP logo in interstate commerce in connection with the Registered Services since at least as early as July 1, 1977.

6. The services covered in U.S. Trademark Registration No. 4139115 are either identical to or closely related to the Registered Services. It is well known that convenience stores offer a variety of food and beverage products and often include in-store restaurant services and/or carry-out services.

7. The mark covered by U.S. Trademark Registration No. 4139115 is identical or virtually identical to the TOWN PUMP mark used by Town Pump and is, therefore, likely to cause confusion, or to cause mistake, or to deceive when used in connection with the services covered in U.S. Trademark Registration No. 4139115.

8. Upon information and belief, the mark covered in U.S. Trademark Registration No. 4139115 has caused actual confusion, mistake and deception among consumers of the Registered Services and/or the services covered by U.S. Trademark Registration No. 4139115.

9. Town Pump has invested a substantial amount of time, effort and money in creating goodwill surrounding the TOWN PUMP mark.

10. Registration and use of the mark THE TOWN PUMP by Registrant constitutes a deliberate misappropriation of the goodwill created by Town Pump in connection with the TOWN PUMP mark.

11. Registrant has no license, consent or permission from Town Pump to use or register the mark THE TOWN PUMP for the services covered by U.S. Trademark Registration No. 4139115.

12. The continuous registration of the mark covered by U.S. Trademark Registration No. 4139115 is causing injury to Town Pump, its business, reputation and goodwill, and will continue to cause injury to Town Pump, its business, reputation and goodwill until the registration is canceled.

* * *

WHEREFORE, Town Pump prays that this Petition to Cancel be sustained in its entirety in favor of Town Pump and that Registration No. 4139115 be canceled. Town

Pump submits herewith a payment to cover its filing fee of \$300.00, as required by 37

C.F.R. § 2.6(a)(16).

Dated: December 7, 2014

Respectfully submitted,

/Antoinette M. Tease/

Antoinette M. Tease
ANTOINETTE M. TEASE, P.L.L.C.
Attorney for Petitioner
PO Box 51016
Billings, MT 59105
(406) 294-9000
Registration No. 53860

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION TO CANCEL is being served on December 7, 2014, by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to Thomas A. Dirksen, attorney for Registrant, at:

Thomas A. Dirksen
4607 Lakeview Canyon Rd., Ste. 117
Westlake Village, CA 91361-4028

/Antoinette M. Tease/
Antoinette M. Tease