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Filing date: **05/01/2015**

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	RP/HH Milford Plaza Lessee L.P.		
Entity	Limited Partnership	Citizenship	Delaware
Address	3953 Maple Avenue, Suite 300 Dallas, TX 75219 UNITED STATES		

Attorney information	Eleanor M. Lackman and Joshua S. Wolkoff Cowan, DeBaets, Abrahams & Sheppard LLP 41 Madison Avenue, 34th Floor New York, NY 10010 UNITED STATES tm@cdas.com Phone:212-974-7474		
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### Registration Subject to Cancellation

Registration No	4511836	Registration date	04/08/2014
Registrant	The Row, Inc. Suite 900 PMB 257 Franklin, TN 370694369 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 043. First Use: 2013/03/09 First Use In Commerce: 2013/03/09 All goods and services in the class are cancelled, namely: Restaurant and catering services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises
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### Grounds for Cancellation

Other	Failure to use in interstate commerce and abandonment/non-use, Trademark Act Sections 1(a) and 45.
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Attachments	2015-05-01 Petition for Cancellation.pdf(24771 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	/Eleanor M. Lackman/
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Name	Eleanor M. Lackman and Joshua S. Wolkoff
Date	05/01/2015

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

In the Matter of Trademark Registration:

Registration No.: 4,511,836

Registrant: The Row, Inc.

Issued: April 8, 2014

Mark: The Row  
KITCHEN & PUB

RP/HH MILFORD PLAZA LESSEE L.P.,

Petitioner,

v.

THE ROW, INC.,

Respondent.

Cancellation No.:

**PETITION FOR CANCELLATION**

Petitioner, RP/HH Milford Plaza Lessee L.P. (“Petitioner”), a Delaware limited partnership having a principal place of business at 3953 Maple Avenue, Suite 300, Dallas, Texas 75219, believes it has been and will continue to be damaged by the continued registration of U.S. Registration No. 4,511,836, issued on April 8, 2014 in the name of The Row, Inc. (“Respondent”) for the mark GENUINE FOOD AND DRINK THE ROW KITCHEN & PUB (and design) (“Respondent’s Registration”), and hereby petitions to cancel same. The grounds for cancellation are as follows:

**Petitioner and its ROW NYC Application**

1. Petitioner is the owner of the Row NYC hotel, one of the largest hotels in Times Square, in the heart of New York City’s theater district. Since opening its doors in 1928 and through various changes in ownership, Petitioner’s hotel has been known by many names: the Hotel Lincoln, Manhattan Hotel, Royal Manhattan, and most recently, the Milford Plaza Hotel.

At the time Petitioner acquired the Milford Plaza Hotel in 2010, the property had fallen into disrepair, with renovation efforts by the hotel's prior owner suspended indefinitely in the wake of the economic downturn.

2. In an effort to breathe new life into the storied hotel, Petitioner invested substantial time and hundreds of millions of dollars into renovating and modernizing the property. In March 2014, following a two-year \$140 million re-development plan, Petitioner debuted its Row NYC hotel to the public.

3. On January 16, 2014, Petitioner filed an application to register the ROW NYC trademark (Serial No. 86/167,923) ("Petitioner's Mark") with the United States Patent and Trademark Office ("USPTO") for "hotel services" in International Class 43 ("Petitioner's Application").

4. During the course of prosecution of Petitioner's Application, the Examining Attorney cited Respondent's Registration as the basis to refuse registration of Petitioner's Mark under Section 2(d) of the Trademark Act. Respondent's efforts to overcome examiner's initial refusal were unsuccessful, prompting the examiner to issue a second, non-final office action dated July 30, 2014.

### **Respondent's Registration**

5. On November 29, 2012, Respondent filed Application Serial No. 85/790,685 for registration of the mark GENUINE FOOD AND DRINK THE ROW KITCHEN & PUB (and design) ("Respondent's Mark") on the Principal Register under Section 1(b), 15 U.S.C. §1051(b) for "[r]estaurant and catering services; [r]estaurant services, namely, providing of food and beverages for consumption on and off the premises" in International Class 43.

6. On January 3, 2014, Respondent submitted a statement of use to the USPTO, accompanied by a sworn declaration, declaring under oath that Respondent's "mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 03/09/2013, and first used in commerce at least as early as 03/09/2013, and is now in use in such commerce." In conjunction with its statement of use, Respondent submitted what purported to be "one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) Menu of food and beverages provided by Applicant."

7. Shortly thereafter, on April 8, 2014, Respondent's Application Serial No. 85/790,685 for Respondent's Mark matured into Registration No. 4,511,836.

8. Upon information and belief, Respondent's Mark is used to denote a single, standalone restaurant located on Music Row in Nashville, Tennessee and called The Row Kitchen & Pub.

9. Upon information and belief, apart from Respondent's restaurant location in Nashville, Tennessee, Respondent does not maintain any other restaurant locations anywhere else in Tennessee or, for that matter, in the United States bearing Respondent's Mark.

10. Upon information and belief, Respondent's business caters to locals. Upon further information and belief, Respondent did not start offering its services to customers out of state on March 9, 2013 (Respondent's purported date of first use in interstate commerce), Respondent was not using Respondent's Mark in interstate commerce when it filed the statement of use and accompanying declaration on January 3, 2014, and Respondent has not sold or offered its services for sale across state lines at any time thereafter.

11. Upon information and belief, Respondent is not currently using Respondent's Mark in connection with the services identified in Respondent's Registration in interstate commerce. Rather, upon information and belief, Respondent's Mark is solely being used by Respondent in intrastate commerce.

COUNT I – VOID AB INITIO

12. Petitioner incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

13. In order to be eligible for registration, a mark must be "used in commerce" in accordance with Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a). Under Section 45 of the Lanham Act, 15 U.S.C. § 1127, "use in commerce" occurs when a mark "is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services."

14. Upon information and belief, Respondent has not used Respondent's Mark in interstate commerce on or in connection with any of the services identified in Respondent's Application and resulting Registration, as of the January 3, 2014 filing date of the statement of use, and on or before the March 9, 2013 alleged date of first use in commerce, as required under Sections 1(a) and 45 of the Lanham Act, 15 U.S.C. §§ 1051(a) and 1127.

15. Accordingly, Respondent's Application and Respondent's Registration are void ab initio, and the registration should be cancelled.

WHEREFORE, Petitioner requests that its petition to cancel Registration No. 4,511,836 be sustained and that the Trademark Trial and Appeal Board grant any and all further relief to Petitioner that the board finds necessary and just in the circumstances.

Dated: New York, New York  
May 1, 2015

COWAN, DeBAETS, ABRAHAMS &  
SHEPPARD LLP

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