

ESTTA Tracking number: **ESTTA676555**

Filing date: **06/05/2015**

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	Pizza Corner, Inc.		
Entity	Corporation	Citizenship	North Dakota
Address	1031 4th Street Southwest Valley City, ND 58072 UNITED STATES		

Attorney information	Michael S. Neustel NEUSTEL LAW OFFICES, LTD 2534 SOUTH UNIVERSITY DRIVE, SUITE 4 FARGO, ND 58103 UNITED STATES michael@neustel.com, jason@neustel.com, kelsey@neustel.com Phone:7012818822
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### Registration Subject to Cancellation

Registration No	3705386	Registration date	11/03/2009
International Registration No.	NONE	International Registration Date	NONE
Registrant	R&C Servizi Srl Corso Mazzini 39  ITALY		

### Goods/Services Subject to Cancellation

Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Pizzas, flour for food
Class 043. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Restaurant, fast-food restaurants and bar services

### Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	2015-06-05 Petition to Cancel.pdf(266702 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	/jlg/
Name	Michael S. Neustel
Date	06/05/2015

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

Pizza Corner, Inc.	)	In Re Registration No.: 3,705,386
	)	For the mark: CORNER PIZZA (and
	Petitioner,	) Design)
	)	Registered on: November 3, 2009
v.	)	
	)	Cancellation No. _____
R&C Servizi Srl,	)	
	)	
	Respondent.	)

**PETITION TO CANCEL**

*Filed Electronically*

Trademark Trial and Appeal Board  
United States Patent and Trademark Office  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Pizza Corner, Inc. hereby believes that it is being damaged by registration of the mark CORNER PIZZA (and Design) in International Classes 030 and 043 shown in Registration No. 3,705,386 and hereby petitions to cancel the same:

As grounds for cancellation, it is alleged that:

1. Pizza Corner, Inc. is a corporation legally organized under the laws of North Dakota, with a principal place of business of 1031 4<sup>th</sup> Street Southwest, Valley City, North Dakota 58072 (“the Petitioner”).
2. The Petitioner opened its first pizza restaurant in 1977 in North Dakota.
3. In 1980, the Petitioner began producing and distributing frozen pizzas and presently distributes pizza throughout the Upper Midwest of the United States.
4. R&C Servizi Srl, a limited liability company legally organized under the laws of Italy, with a principal place of business of Corse Mazzini 39, I-26900, Lodi, Italy (“the Respondent”) is the currently-listed owner of record of the mark CORNER PIZZA

(and Design) (“Respondent’s Mark”) as identified in U.S. Registration No. 3,705,386 registered in connection with “pizzas, flour for food” in International Class 030 and “restaurant, fast-food restaurants and bar services” in International Class 043 (“Respondent’s Registration”).

5. The Respondent’s Mark is illustrated below:



6. The Petitioner is the owner of a trademark application filed under Section 1(a) for the word mark PIZZA CORNER (“Petitioner’s Mark”), U.S. Serial Number 86/521,329, filed in connection with “pizza; prepared pizza; frozen pizza” in International Class 030 and “restaurant services; take-out restaurant services; pizza parlor” in International Class 043 (“the ‘129 Application”).

7. The Petitioner filed the ‘129 Application with the United States Patent and Trademark Office on February 2, 2015, claiming a date of first use in commerce of May 1, 1980 with respect to International Class 030 and January 1, 1977 with respect to International Class 043.

8. On May 13, 2015, the United States Patent and Trademark Office issued an Office Action rejecting the ‘129 Application under Section 2(d) because of a likelihood of confusion with Respondent’s Registration.

9. The Petitioner has standing to file this cancellation because Respondent’s Registration has prevented the allowance of the ‘129 Application. The ‘129 Application

will eventually be abandoned, causing irreparable damage and injury to the Petitioner, if the Respondent's Registration is not successfully cancelled.

10. Respondent's Registration is a source of damage and injury to the Petitioner as it will prevent the USPTO from issuing a registration to the Petitioner for the Petitioner's Mark.

11. If Respondent's Registration is not successfully cancelled, the Respondent will continue to own the *prima facie* exclusive right to use Respondent's Mark in connection with goods and services that a USPTO Examining Attorney has deemed confusingly similar to the Petitioner's goods and services.

12. The Respondent filed U.S. Trademark Application Serial Number 79/035,385 with the United States Patent and Trademark Office on December 21, 2006 ("the 385 Application").

13. The '385 Application was filed under Section 66A based on foreign priority of Italian Trademark Application Serial Number TO2006C001821 which matured into Italian Trademark Registration Number 1,032,197, having a registration date of December 21, 2006.

14. The '385 Application claimed a priority date under the Paris Convention of July 4, 2006.

15. The Respondent has not filed a Section 71 Affidavit of Use in Commerce or Excusable Non-Use as of the filing date of this Petition.

16. Upon information and belief, the Respondent never commenced the use of the Respondent's Mark in commerce in connection with "pizzas, flour for food" in International Class 030.

17. Upon information and belief, the Respondent is not currently using the Respondent's Mark in commerce in connection with "pizzas, flour for food" in International Class 030.

18. Upon information and belief, the Respondent never commenced the use of the Respondent's Mark in commerce in connection with "restaurant, fast-food restaurants and bar services" in International Class 043

19. Upon information and belief, the Respondent is not currently using the Respondent's Mark in commerce in connection with "restaurant, fast-food restaurants and bar services" in International Class 043.

20. Upon information and belief, to the extent that the Respondent did commence use of Respondent's Mark in commerce, the Respondent has discontinued such usage with intent not to resume such usage, and thus the Respondent has abandoned the Respondent's Mark.

21. Upon information and belief, for at least the last three consecutive years, the Respondent has not used the Respondent's Mark as shown in the Respondent's Registration, thereby constituting *prima facie* evidence of abandonment of the Respondent's Mark as shown in Respondent's Registration.

22. In view of the Respondent's non-use and abandonment of the Respondent's Mark shown in Respondent's Registration, the Respondent is not entitled to continued registration of the Respondent's Mark pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3), and, as such, Respondent's Registration should be cancelled.

23. The continued existence of Respondent's Registration casts a cloud upon the Petitioner's right to continue to use and expand the use of the Petitioner's Mark. The continued existence of Respondent's Registration will prevent the Petitioner from securing a trademark registration for the Petitioner's Mark. As such, Respondent's Registration is a source of damage and injury to Petitioner and should be cancelled.

24. Because the Petitioner's attempt to register the mark as shown in the '129 Application will be impaired by the continued registration of the Respondent's Mark, and, further, because Petitioner believes that the Respondent has abandoned the Respondent's Mark, Respondent's Registration should be cancelled.

25. For the foregoing reasons, Respondent should not be entitled to the continued registration of U.S. Registration No. 3,705,386 for the mark CORNER PIZZA (and Design) in International Classes 030 and 043.

WHEREFORE, Petitioner prays that this cancellation be granted in its favor and that U.S. Registration No. 3,705,386 for the mark CORNER PIZZA (and Design) be cancelled in its entirety.

Respectfully submitted,

Dated: June 5, 2015

/s/ Michael S. Neustel  
Michael S. Neustel (Reg. No. 41,221)  
Jason L. Gilbert (Reg. No. 63,621)

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Attorneys for Petitioner

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITION TO CANCEL U.S. Registration No. 3,705,386 was mailed on June 5, 2015, first class postage prepaid, to the both the owner and correspondent as listed by the USPTO:

R&C Servizi Srl  
Corso Mazzini 39  
I-26900 Lodi  
Italy

Buzzi, Notaro & Antonielli d'Oulx Srl  
Via Maria Vittoria, 18  
I-10123 Torino  
Italy

/s/ Shasta Schneider  
Shasta Schneider

Date: June 5, 2015

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## CERTIFICATE OF FILING

I hereby certify that this correspondence was filed electronically through the TTAB's ESTTA (Electronic System for Trademark Trials and Appeals) system, on June 5, 2015.

/s/ Jason Gilbert  
Jason L. Gilbert (Reg. No. 63,621)

Date: June 5, 2015

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