

ESTTA Tracking number: **ESTTA748715**

Filing date: **05/26/2016**

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	Cowgirl Tuff Co.		
Entity	Corporation	Citizenship	Minnesota
Address	185 Swendra Blvd NE Cokato, MN 55321 UNITED STATES		

Attorney information	Julie Finch Law Office of Julie L. Finch, PLLC 15050 Cedar Avenue S #116-360 Apple Valley, MN 55124 UNITED STATES jfinch@finch-law.com Phone:651-261-8409		
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Registration Subject to Cancellation

Registration No	4777712	Registration date	07/21/2015
Registrant	World Wrestling Entertainment, Inc. 1241 East Main Street Stamford, CT 06902 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2008/10/31 First Use In Commerce: 2008/10/31
All goods and services in the class are cancelled, namely: Clothing, namely, tops, jackets, bottoms, underwear, pajamas; footwear, namely, shoes, sneakers, slippers; headwear, namely, hats

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Failure to function as a mark	Trademark Act Sections 14(1) and 1,2 and 45

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3095259	Application Date	03/18/2005
Registration Date	05/23/2006	Foreign Priority Date	NONE
Word Mark	COWGIRL TUFF CO. EST. 1999 EVEN THOUGH YOU'VE BEEN BUCKED, KICKED, BIT & STOMPED NEVER GIVE UP!		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2003/10/15 First Use In Commerce: 2003/10/15 shirts, blouses, jackets, shorts, hats,caps, sweatshirts, pants		

U.S. Registration No.	3400075	Application Date	07/31/2006
Registration Date	03/18/2008	Foreign Priority Date	NONE
Word Mark	PEIDI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 2006/12/00 First Use In Commerce: 2006/12/00 Food and edible treats for pets, including dogs, cats, birds, fish, reptiles, horses, hamsters, gerbils, ferrets, rabbits, sugar gliders, and guinea pigs		

U.S. Application No.	86341761	Application Date	07/18/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	COWGIRL TUFF COMPANY NEVER GIVE UP		

Design Mark	COWGIRL TUFF COMPANY NEVER GIVE UP
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2000/04/04 First Use In Commerce: 2000/04/04 Jackets; Jeans; Shirts; Sweatshirts

Attachments	78590196#TMSN.png(bytes) 78941139#TMSN.png(bytes) 86341761#TMSN.png(bytes) 2016-05-26 Petition to Cancel 4777712.pdf(558705 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	/Julie Finch/
Name	Julie Finch
Date	05/26/2016

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

In the Matter of Trademark Registration No: 4,777,712
Registered: July 21, 2015
For the Mark: NEVER GIVE UP

Cowgirl Tuff Co.,

Cancellation No.

Petitioner,

v.

PETITION TO CANCEL

World Wrestling Entertainment,

Registrant.

Cowgirl Tuff Co., a Minnesota Corporation having its principal place of business at 185 Swendra Blvd NE, Cokato, MN 55321 (the "Petitioner"), believes that it has been damaged by Registration No. 4,777,712 for the mark NEVER GIVE UP, and hereby petitions to cancel the same. In support of its grounds, Petitioner alleges as follows:

1. Petitioner is a manufacturer of jeans, tops, jackets and other clothing items. Since at least as early as 1999, Petitioner has used the mark "Never Give Up" in connection with jeans, shirts and tops as a standalone mark and in association with other marks owned by Petitioner.

2. Petitioner is the owner of Federal Trademark Registration 3,095,259, for Petitioner's original logo, which registration issued on May 23, 2006 for use in connection with shirts, blouses, jackets, shorts, hats, caps, sweatshirts, and pants.



The logo in this registration contains the phrase “Never Give Up” in large letters at the bottom of the design.

3. Petitioner is the owner of Federal Trademark Registration 3,400,075, for Petitioner’s original logo, which registration issued on May 20, 2008 for use in connection with wallets, handbags, leather key chains, breast collars, saddles, reins,



whips, horse saddle blankets, saddle covers and bits. The logo in this registration contains the phrase “Never Give Up” in large letters at the bottom of the design.

4. Petitioner’s use of NEVER GIVE UP is inherently distinctive and well-known among consumers.

5. As a result of Petitioners extensive sales, marketing and advertising of its NEVER GIVE UP marks since at least as early as 1999, the Petitioner’s use of its NEVER GIVE UP marks have come to represent highly valuable consumer goodwill.

6. On July 18,, 2014 Petitioner filed U.S. Trademark Application Serial Number 86,341,761 for the mark COWGIRL TUFF NEVER GIVE UP for use in connection with Jackets, Jeans, Shirts and Sweatshirts with a first use in commerce date of at least April 4, 2000.

7. On May 9, 2013, Registrant World Wrestling Entertainment, Inc., filed U.S. Trademark Application Serial Number 85,927,388 for the mark NEVER GIVE UP, as

an intent to use application for “clothing, namely, tops, jackets, bottoms, underwear, pajamas; footwear, namely shoes, sneakers, slippers, headwear, namely hats”.

8. Upon information and belief Registrant is an entertainment brand in the field of wrestling.

9. On May 9, 2013 Registrant filed the section 1b intent to use application that ultimately became the subject registration.

10. On October 14, 2014 Registrant in filed a statement of use claiming to have been using the subject mark since at least October 13, 2008. An office action issued because the specimen did not showing use of the phrase as a trademark.

11. Registrant filed a second specimen of use on May 29, 2015, this time showing the subject phrase as a slogan on a sweatshirt and claimed use in commerce as of at least October 31, 2008. This specimen was accepted by the examiner and the application matured into the registration at issue.

10. On December 1, 2015 Petitioner’s Application for COWGIRL TUFF NEVER GIVE UP (Serial Number 86,341,761) was refused registration based on a finding of a likelihood of confusion with the subject Registration.

PRIORITY OF USE

12. On information and belief, Registrant does not have any basis for claiming rights in the phrase “NEVER GIVE UP” prior to Petitioner's first use of its COWGIRL TUFF NEVER GIVE UP mark.

13. Petitioner's first use of its COWGIRL TUFF NEVER GIVE UP mark predates the May 9, 2013 intent to use filing date of Registrant by more

than 13 years, and predates Registrant's alleged "first use" of its mark on October 13, 2008 by more than 8 years.

14. Thus, Petitioner has priority of use based on its earlier use in commerce and its earlier registrations that claim the phrase.

REGISTRANT'S USE IS MERE ORNAMENTATION

15. The specimen provided to the Trademark Office to support the subject registration shows use of the claimed phrase as mere ornamentation under 15 U.S.C 1501 and 1502 and not as a trademark. The submitted specimen merely shows a sweatshirt with a slogan printed on it.

LIKELIHOOD OF CONFUSION

16. The goods claimed by Petitioner and Registrant are nearly identical.

17. Registrant's NEVER GIVE UP mark so resembles Petitioner's marks that the public is likely to view Registrant's mark as denoting an affiliation, connection, or association of Registrant with Petitioner and an association as to the origin, sponsorship, and approval of Registrant's goods by Petitioner, when that is not the case, thereby damaging Petitioner.

18. Petitioner has been damaged by the subject Registration because Petitioner's Application for a mark that Petitioner has been using for approximately 16 years was refused based on a finding of likelihood of confusion with the subject Registration.

17. Further, Petitioner will be damaged in that such registration would support and assist in the infringing use of the mark, and will give colorable exclusive statutory rights to the Registrant in violation and derogation of the prior and superior common law trademark rights of Petitioner.

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained, and that Registration No. 4,777,712 be cancelled.

Dated: May 26, 2016

LAW OFFICE OF JULIE L. FINCH, PLLC

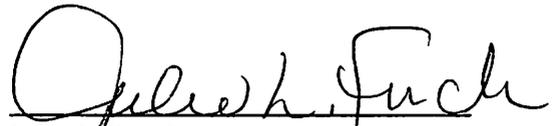
A handwritten signature in cursive script, appearing to read "Julie L. Finch", written over a horizontal line.

Julie L. Finch
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Petitioner's "Petition to Cancel" US
Registration 4,777, 712 was sent by first class mail to Registrant this 26st day of
May 26 at the following address:

Ms. L. Kienes-Middlen, Esq.
Attorney for Registrant
World Wrestling Entertainment
1241 E. Main St.
Stamford, CT 06902-2827


Julie L. Finch
Attorney for Applicant