

ESTTA Tracking number: **ESTTA751452**

Filing date: **06/09/2016**

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	Bigfoot Ventures LLC		
Entity	Limited Liability Company	Citizenship	New York
Address	246 West Broadway New York, NY 10013 UNITED STATES		

Attorney information	Roman A. Popov 246 West Broadway, 4th Floor New York, NY 10013 UNITED STATES rp@mortonassociates.com Phone:(212) 796 4309		
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Registration Subject to Cancellation

Registration No	4778284	Registration date	07/21/2015
Registrant	Anchor Audio, Inc. 5931 Darwin Court Carlsbad, CA 92008 UNITED STATES		

Goods/Services Subject to Cancellation

Class 009. First Use: 2015/04/22 First Use In Commerce: 2015/04/22 All goods and services in the class are cancelled, namely: Audio circuit boards; Audio speaker enclosures; Audio speakers

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3315066	Application Date	01/05/2004
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	BIGFOOT ENTERTAINMENT		
Design Mark	BIGFOOT ENTERTAINMENT		
Description of	NONE		

Mark	
Goods/Services	<p>Class 009. First use: First Use: 2004/05/00 First Use In Commerce: 2004/05/00 Pre-recorded audio and visual recordings, namely, tapes, cassettes, DVDs, and CDs featuring music, comedy, science fiction, and drama including fiction and non-fiction excluding vehicle parts, products, accessories and services as well as the automotive/vehicle after-market generally</p> <p>Class 041. First use: First Use: 2004/05/00 First Use In Commerce: 2004/05/00 Entertainment services, namely, production and distribution of entertainment and educational motion picture films, on a wide variety of themes, excluding vehicle parts, products, accessories and services as well as the automotive/vehicle after-market generally</p>

U.S. Registration No.	3462772	Application Date	01/05/2004
Registration Date	07/08/2008	Foreign Priority Date	NONE

Word Mark	BIGFOOT FILMS
Design Mark	BIGFOOT FILMS

Description of Mark	NONE
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Goods/Services	<p>Class 009. First use: First Use: 2004/05/30 First Use In Commerce: 2004/05/30 Pre-recorded audio and video recordings excluding materials related to monster trucks and monster truck racing, and excluding materials related to vehicle parts, products, accessories and services as well as the automotive/vehicle after-market generally</p> <p>Class 041. First use: First Use: 2004/05/30 First Use In Commerce: 2004/05/30 entertainment services, namely, production and distribution of entertainment and educational motion picture films on a wide variety of themes excluding materials related to monster trucks and monster truck racing, and excluding materials related to vehicle parts, products, accessories and services as well as the automotive/vehicle after-market generally</p>
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U.S. Registration No.	3315067	Application Date	01/02/2004
Registration Date	10/23/2007	Foreign Priority Date	NONE

Word Mark	BIGFOOT
Design Mark	BIGFOOT

Description of Mark	NONE
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Goods/Services	Class 009. First use: First Use: 2002/12/00 First Use In Commerce: 2002/12/00 "Pre-recorded audio and visual recordings, namely, tapes, cassettes, DVDs, and CDs featuring music, comedy, science fiction, and drama including fiction and non-fiction, excluding vehicle parts, products, accessories and services as well as the automotive/vehicle after-market generally"
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U.S. Registration No.	3328301	Application Date	01/02/2004
Registration Date	11/06/2007	Foreign Priority Date	NONE

Word Mark	BIGFOOT
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Design Mark	BIGFOOT
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Description of Mark	NONE
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Goods/Services	Class 041. First use: First Use: 2004/05/00 First Use In Commerce: 2004/05/00 Entertainment services, namely, production and distribution of entertainment and educational motion picture films, on a wide variety of themes, excluding vehicle parts, products, accessories and services as well as the automotive/vehicle after-market generally
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Attachments	76569346#TMSN.png(bytes) 76569348#TMSN.png(bytes) 76569405#TMSN.png(bytes) 76977258#TMSN.png(bytes) Cancellation.6.9.16.pdf(439006 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	/s/ Roman A. Popov
Name	Roman A. Popov
Date	06/09/2016

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

BIGFOOT VENTURES LLC,

Petitioner,

v.

ANCHOR AUDIO, INC.,

Registrant.

Cancellation No.

In re Registration No. 4,778,284

Mark: BIGFOOT

Registered: July 21, 2015

PETITION FOR CANCELLATION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Pursuant to 37 C.F.R. §2.111(b), Bigfoot Ventures LLC (“Petitioner”), a limited liability company duly organized and existing under the laws of the state of New York and having its principal place of business at 246 West Broadway, New York, New York 10013, believes that it has and will continue to be damaged by U.S. Reg. No. 4,778,284 for the mark BIGFOOT, issued on July 21, 2015 (“Registrant’s Mark”) and currently owned by Anchor Audio, Inc., a California corporation having a principal place of business at 5931 Darwin Court, Carlsbad, California 92008 (“Registrant”), and hereby petitions to cancel the same.

As grounds for cancellation, Petitioner alleges that:

The grounds for cancellation are as follows:

1. Petitioner is a wholly-owned subsidiary of Bigfoot Entertainment Inc., (“Bigfoot Entertainment”) a well-known, renowned entertainment company involved in the development, financing, production and distribution of media content, including independent feature films, television series, reality shows and documentaries.

2. Bigfoot Entertainment is part of the Bigfoot Group of Companies and focuses on distributing films both within the United States and on a global scale. Bigfoot Entertainment is the owner of record for the famous Crest Theatre in Westwood, Los Angeles, as well as a major interest holder in Carmike Cinemas. The company also owns and produces the Fashion One channel, broadcast in over 120 countries to an audience of over 100 million viewers.

3. Since as early as 1995, Petitioner and its predecessor in title has uninterruptedly engaged in marketing various goods and services under a family of “BIGFOOT” marks, which has steadily expanded over the years. Information on Petitioner’s goods and services are available on its website, at the domain www.bigfoot.com.

4. Petitioner owns numerous trademark registrations on the USPTO Principal Register for the following goods and services (“Ppetitioner’s BIGFOOT Marks”):

REGISTRATION NO.	MARK	GOODS AND SERVICES
3,315,066	BIGFOOT ENTERTAINMENT	Cl. 9 - Pre-recorded audio and visual recordings, namely, tapes, cassettes, DVDs, and CDs featuring music, comedy, science fiction, and drama including fiction and non-fiction excluding vehicle parts, products, accessories and services as well as the automotive/vehicle after-market generally Cl. 41 - Entertainment services, namely, production and distribution of entertainment and educational motion picture films, on a wide variety of themes, excluding vehicle parts, products, accessories and services as well as the automotive/vehicle after-market generally
3,462,772	BIGFOOT FILMS	Cl. 9 - Pre-recorded audio and video recordings excluding materials related to monster trucks and monster truck racing, and excluding materials related to vehicle parts, products, accessories and services as well as the automotive/vehicle after-market generally Cl. 41 - Entertainment services, namely, production and distribution of entertainment and educational motion picture films on a wide variety of themes excluding materials related to

		monster trucks and monster truck racing, and excluding materials related to vehicle parts, products, accessories and services as well as the automotive/vehicle after-market generally
3,315,067	BIGFOOT	Cl. 9 - Pre-recorded audio and visual recordings, namely, tapes, cassettes, DVDs, and CDs featuring music, comedy, science fiction, and drama including fiction and non-fiction, excluding vehicle parts, products, accessories and services as well as the automotive/vehicle after-market generally
3,328,301	BIGFOOT	Cl. 41 - Entertainment services, namely, production and distribution of entertainment and educational motion picture films, on a wide variety of themes, excluding vehicle parts, products, accessories and services as well as the automotive/vehicle after-market generally

5. Registrations of Petitioner’s BIGFOOT Marks is valid, subsisting and conclusive evidence of Petitioner’s exclusive right to use Petitioner’s BIGFOOT Marks in commerce on the goods and services specified in the above-referenced registrations. USPTO Registration Certificates for Petitioner’s BIGFOOT Marks are annexed hereto as **Exhibit A**.

6. Upon information and belief, Registrant filed an Intent-to-Use application to register the mark “Bigfoot” for “Audio circuit boards; Audio speaker enclosures; Audio speakers” in Class 9 on March 21, 2014 under Section 1(b) of the Lanham Act and subsequently amended its filing basis to Section 1(a) on April 26, 2015. Registrant’s Mark was thereafter registered on July 21, 2015.

7. Each of the Petitioner’s BIGFOOT Marks were used in commerce and consequently, registered on the USPTO Principal Register almost a decade prior to the July 21, 2015 registration date of Registrant’s Mark. *See Exhibit A*.

Basis for Cancellation – Likelihood of Confusion with Petitioner’s BIGFOOT Marks

8. On May 3, 2016, during a routine check of the USPTO database, Petitioner was notified of Registrant’s Mark.

9. Reg. No. 4,778,284 must be cancelled on the grounds that Registrant’s Mark so resembles Petitioner’s BIGFOOT Marks as to cause confusion, mistake and/or deception, all to the damage of Petitioner.

10. The similarity in appearance, sound, and commercial impression between Registrant’s Mark and Petitioner’s BIGFOOT Marks engenders a likelihood of confusion when consumers, with only a general recollection of Petitioner’s BIGFOOT Marks, encounter Registrant’s Mark in the marketplace.

11. Registrant’s use of the BIGFOOT mark is likely to cause confusion, mistake or deception with consequent injury to Petitioner and the public. Such use and registration of Registrant’s Mark is likely to cause consumers to mistakenly believe that Registrant’s goods emanate from Petitioner or that Registrant is in some way associated or connected to Petitioner when, in fact, no such relationship exists.

12. A subsidiary of Bigfoot Entertainment, Bigfoot Studios, provides state of the art production and post production facilities and equipment such as, *inter alia*, audio speakers, audio circuit boards and other devices related to audio transmission, to Bigfoot Productions, the International Academy of Film and Television and outside production companies.

13. Bigfoot Studios privately owns numerous sound stages involved in the production of theater, film, television and other entertainment related fields.

14. Moreover, Petitioner owns USPTO Reg. No. 4,623,931 for the mark CYBERBOX in International Class 9 for a 1080 HDMI video and audio media player/software.

15. Such a considerable emphasis on sound recording and reproduction, audio transmission and sound design illustrates that Petitioner and the BIGFOOT brand is intimately intertwined with audio production and is likely to expand into the realm of promoting and manufacturing audio equipment.

16. As such, the International Class 9 goods enumerated in Anchor Audio's Registration No. 4,778,284, are within the Petitioner's natural zone of expansion for its BIGFOOT Marks.

17. Petitioner has built up significant good will in connection with the sale of goods and services under the BIGFOOT Marks. Since its initial use of the BIGFOOT Marks, Petitioner has made substantial investments in globally advertising and promoting its goods and services in various fields and through various channels of trade.

18. Consequently, Petitioner's customers and the general public have come to recognize Petitioner's BIGFOOT Marks and associate them with the Petitioner, the BIGFOOT brand and the goods and services it offers.

19. Should U.S. Reg. No. 4,778,284 be permitted to remain on the Principal Register, given the similarity of the commercial impression generated by the two marks and the substantial likelihood of consumer confusion, Registrant could presumably use the aforementioned registration to irreparably harm Petitioner's BIGFOOT brand.

20. In addition, the continued registration of U.S. Reg. No. 4,778,284 will inhibit Petitioner's expansion of its BIGFOOT brand by calling into question the validity of its pending USPTO applications, as well as those of its local and foreign affiliates.

WHEREFORE, Petitioner, Bigfoot Ventures LLC, believes and avers that it has been, and will continue to be, damaged by the continued registration of U.S. Reg. No. 4,778,284 and

prays that said registration be cancelled pursuant to 37 C.F.R. §2.111(b) on the basis of a likelihood of confusion with Petitioner's BIGFOOT Marks.

Dated: New York, New York
June 9, 2016

Respectfully submitted,

MORTON & ASSOCIATES LLLP

By:  _____

Roman A. Popov, Esq.
Attorney for Petitioner
Bigfoot Ventures LLC
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New York, NY 10013
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rp@mortonassociates.com

EXHIBIT A

Int. Cls.: 9 and 41

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101 and 107

Reg. No. 3,315,066

United States Patent and Trademark Office

Registered Oct. 23, 2007

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

BIGFOOT ENTERTAINMENT

BIGFOOT ENTERTAINMENT (BVI) LTD.
(BR.VIRGIN ISLANDS CORPORATION)
C/O JEFFREY BERKMAN
2592 OVERLOOK PLACE
BALDWIN, NY 11510

FOR: PRE-RECORDED AUDIO AND VISUAL RECORDINGS, NAMELY, TAPES, CASSETTES, DVDS, AND CDS FEATURING MUSIC, COMEDY, SCIENCE FICTION, AND DRAMA INCLUDING FICTION AND NON-FICTION EXCLUDING VEHICLE PARTS, PRODUCTS, ACCESSORIES AND SERVICES AS WELL AS THE AUTOMOTIVE/VEHICLE AFTER-MARKET GENERALLY, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 5-0-2004; IN COMMERCE 5-0-2004.

FOR: ENTERTAINMENT SERVICES, NAMELY, PRODUCTION AND DISTRIBUTION OF ENTERTAINMENT AND EDUCATIONAL MOTION PIC-

TURE FILMS, ON A WIDE VARIETY OF THEMES, EXCLUDING VEHICLE PARTS, PRODUCTS, ACCESSORIES AND SERVICES AS WELL AS THE AUTOMOTIVE/VEHICLE AFTER-MARKET GENERALLY, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 5-0-2004; IN COMMERCE 5-0-2004.

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

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ENTERTAINMENT", APART FROM THE MARK AS SHOWN.

SER. NO. 76-569,346, FILED 1-5-2004.

VIVIAN MICZNIK FIRST, EXAMINING ATTORNEY

Int. Cls.: 9 and 41

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101, and 107

Reg. No. 3,462,772

United States Patent and Trademark Office

Registered July 8, 2008

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

BIGFOOT FILMS

BIGFOOT ENTERTAINMENT (BVI) LTD.
(BR. VIRGIN ISLANDS CORPORATION)
C/O JEFFREY BERKMAN
2592 OVERLOOK PLACE
BALDWIN, NY 11510

FOR: PRE-RECORDED AUDIO AND VIDEO RECORDINGS EXCLUDING MATERIALS RELATED TO MONSTER TRUCKS AND MONSTER TRUCK RACING, AND EXCLUDING MATERIALS RELATED TO VEHICLE PARTS, PRODUCTS, ACCESSORIES AND SERVICES AS WELL AS THE AUTOMOTIVE/VEHICLE AFTER-MARKET GENERALLY, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 5-30-2004; IN COMMERCE 5-30-2004.

FOR: ENTERTAINMENT SERVICES, NAMELY, PRODUCTION AND DISTRIBUTION OF ENTERTAINMENT AND EDUCATIONAL MOTION PICTURE FILMS ON A WIDE VARIETY OF THEMES

EXCLUDING MATERIALS RELATED TO MONSTER TRUCKS AND MONSTER TRUCK RACING, AND EXCLUDING MATERIALS RELATED TO VEHICLE PARTS, PRODUCTS, ACCESSORIES AND SERVICES AS WELL AS THE AUTOMOTIVE/VEHICLE AFTER-MARKET GENERALLY, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 5-30-2004; IN COMMERCE 5-30-2004.

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

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FILMS", APART FROM THE MARK AS SHOWN.

SN 76-569,348, FILED 1-5-2004.

RICHARD A. STRASER, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 3,315,067

United States Patent and Trademark Office

Registered Oct. 23, 2007

**TRADEMARK
PRINCIPAL REGISTER**

BIGFOOT

BIGFOOT ENTERTAINMENT (BVI) LTD.
(BR.VIRGIN ISLANDS CORPORATION)
C/O JEFFREY BERKMAN
2592 OVERLOOK PLACE
BALDWIN, NY 11510

FOR: "PRE-RECORDED AUDIO AND VISUAL RECORDINGS, NAMELY, TAPES, CASSETTES, DVDS, AND CDS FEATURING MUSIC, COMEDY, SCIENCE FICTION, AND DRAMA INCLUDING FICTION AND NON-FICTION, EXCLUDING VEHICLE PARTS, PRODUCTS, ACCESSORIES AND SERVICES AS WELL AS THE AUTOMOTIVE/VEHICLE

AFTER-MARKET GENERALLY", IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 12-0-2002; IN COMMERCE 12-0-2002.

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

SER. NO. 76-569,405, FILED 1-2-2004.

VIVIAN MICZNIK FIRST, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 3,328,301

United States Patent and Trademark Office

Registered Nov. 6, 2007

**SERVICE MARK
PRINCIPAL REGISTER**

BIGFOOT

BIGFOOT ENTERTAINMENT (BVI) LTD.
(BR.VIRGIN ISLANDS CORPORATION)
C/O JEFFREY BERKMAN
2592 OVERLOOK PLACE
BALDWIN, NY 11510

FIRST USE 5-0-2004; IN COMMERCE 5-0-2004.

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

FOR: ENTERTAINMENT SERVICES, NAMELY, PRODUCTION AND DISTRIBUTION OF ENTERTAINMENT AND EDUCATIONAL MOTION PICTURE FILMS, ON A WIDE VARIETY OF THEMES, EXCLUDING VEHICLE PARTS, PRODUCTS, ACCESSORIES AND SERVICES AS WELL AS THE AUTOMOTIVE/VEHICLE AFTER-MARKET GENERALLY, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

SER. NO. 76-977,258, FILED 1-2-2004.

VIVIAN MICZNIK FIRST, EXAMINING ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITION FOR CANCELLATION, with exhibits, has been served on Anchor Audio, Inc., by mailing said copy on June 9, 2016, via USPS First Class Mail, postage prepaid to:

Anchor Audio, Inc.
5931 Darwin Court
Carlsbad, CA 92008-7302

Dated: New York, New York
June 9, 2016

Morton & Associates LLLP

By: 

Roman A. Popov, Esq.
Attorney for Opposer