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Filing date: **08/05/2016**

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	Askov Holdings, LLC		
Entity	Limited Liability Company	Citizenship	Minnesota
Address	200 North 1st Street Minneapolis, MN 55401 UNITED STATES		

Attorney information	Stephen R. Baird Winthrop & Weinstine, P.A. 225 South Sixth Street Capella Tower, Suite 3500 Minneapolis, MN 55402 UNITED STATES trade- mark@winthrop.com,wanderson@winthrop.com,sbaird@winthrop.com,sbell@winthrop.com,jbriley@winthrop.com Phone:612-604-6585
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Registration Subject to Cancellation

Registration No	3962466	Registration date	05/17/2011
Registrant	ROGER D. POPA 630 WEST 10TH ST TRAVERSE CITY, MI 49684 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2008/06/01 First Use In Commerce: 2009/06/15 All goods and services in the class are cancelled, namely: Bottoms; Golf shirts; Hats; Hooded sweat shirts; Jogging pants; Long-sleeved shirts; Lounge pants; Pants; Pique shirts; Polo shirts; Shirts; Shirts and short-sleeved shirts; Shirts for infants, babies, toddlers and children; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Sport shirts; Sweat pants; Sweatshirts; T-shirts; Tee shirts; Tops; Yoga pants; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Capri pants; Cargo pants; Dress shirts; Fleece vests; Knit shirts; Moisture-wicking sports shirts; Rugby shirts; Wind pants; Wind shirts
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Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	20160805 - Petition to Cancel - Roger Popa.pdf(716396 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	/WDA/
Name	Wesley D. Anderson
Date	08/05/2016

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

Askov Holdings, LLC)	
)	
Petitioner,)	Registration No. 3,962,466
)	
v.)	Cancellation No. _____
)	
Roger D. Popa d/b/a Petoskey Pete's)	
)	
Respondent.)	

PETITION TO CANCEL

Askov Holdings, LLC (“Petitioner”) believes that it is, has been, and will continue to be damaged by registration of the claimed mark NORTH (Stylized) & Design, U.S. Registration No. 3,962,466 (“Respondent’s Claimed Mark”), and hereby petitions to cancel the same pursuant to the provisions of 15 U.S.C. § 1064. The grounds for cancellation are as follows:

COUNT 1

1. Petitioner is the record owner of two NORTH trademark applications, namely, Application Serial No. 87/002,339, for NORTH in connection with “clothing” in International Class 25 and Application Serial No. 87/000,423 for NORTH (Stylized) & Design in connection with “clothing” in International Class 25 (“Petitioner’s NORTH Applications”).

2. Upon information and belief, Roger D. Popa d/b/a Petoskey Pete’s, a Michigan sole proprietorship having an address of 630 West 10th St., Traverse City, Michigan, 49684 (“Respondent”) is listed as the record owner of: U.S. Registration No. 3,962,466 (“Respondent’s Registration”) for Respondent’s Claimed Mark, depicted below, for “Bottoms; Golf shirts; Hats; Hooded sweat shirts; Jogging pants; Long-sleeved shirts; Lounge pants; Pants; Pique shirts; Polo shirts;

Shirts; Shirts and short-sleeved shirts; Shirts for infants, babies, toddlers and children; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Sport shirts; Sweat pants; Sweat shirts; T-shirts; Tee shirts; Tops; Yoga pants; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Capri pants; Cargo pants; Dress shirts; Fleece vests; Knit shirts; Moisture-wicking sports shirts; Rugby shirts; Wind pants; Wind shirts” in International Class 25 (“Respondent’s Claimed Goods”):



3. Petitioner has been and is likely to continue to be damaged by registration of Respondent’s Claimed Mark because Petitioner’s NORTH Applications were issued Office Actions on August 2, 2016, in which the U.S. Patent and Trademark Office refused registration of Petitioner’s NORTH Applications under Section 2(d) of the Lanham Act, relying on the continued registration of Respondent’s Claimed Mark.

4. Upon information and belief, Respondent has never made use in commerce of Respondent’s Claimed Mark in connection with any goods or services.

5. Upon information and belief, Respondent has never made use in commerce of Respondent’s Claimed Mark in connection with Respondent’s Claimed Goods.

6. Upon information and belief, Respondent has never made use in commerce of Respondent’s Claimed Mark in connection with the goods originally applied-for in U.S. Application No. 77789289, which later matured into U.S. Reg. No. 3,962,466.

7. Upon information and belief, as of July 24, 2009, Respondent had not made use in commerce of Respondent's Claimed Mark in connection with any goods or services.

8. Upon information and belief, as of July 24, 2009, Respondent had not made use in commerce of Respondent's Claimed Mark in connection with Respondent's Claimed Goods.

9. Upon information and belief, as of July 24, 2009, Respondent had not made use in commerce of Respondent's Claimed Mark in connection with the goods originally applied-for in U.S. Application No. 77789289, which later matured into U.S. Reg. No. 3,962,466.

10. Upon information and belief, as of March 11, 2011, Respondent had not made use in commerce of Respondent's Claimed Mark in connection with any goods or services.

11. Upon information and belief, as of March 11, 2011, Respondent had not made use in commerce of Respondent's Claimed Mark in connection with Respondent's Claimed Goods.

12. Upon information and belief, as of March 11, 2011, Respondent had not made use in commerce of Respondent's Claimed Mark in connection with the goods originally applied-for in U.S. Application No. 77/789,289, which later matured into U.S. Reg. No. 3,962,466.

13. Upon information and belief, U.S. Reg. No. 3,962,466 was and is void *ab initio*.

COUNT 2

14. Petitioner hereby restates and realleges allegations 1 through 13 above as if made fully herein below.

15. Upon information and belief, Respondent has not made use in commerce of Respondent's Claimed Mark in connection with any goods or services for a period of more than three consecutive years.

16. Upon information and belief, Respondent has not made use in commerce of Respondent's Claimed Mark in connection with Respondent's Claimed Goods for a period of more than three consecutive years.

17. Upon information and belief, Respondent has not made use in commerce of Respondent's Claimed Mark in connection with the goods originally applied-for in U.S. Application No. 77/789,289, which later matured into U.S. Reg. No. 3,962,466, for a period of more than three consecutive years.

18. Upon information and belief, any use by Respondent of Respondent's Claimed Mark has been made solely to reserve rights in Respondent's Claimed Mark and does not constitute a bona fide use of Registrant's Claimed Mark in commerce in the ordinary course of trade.

19. Upon information and belief, Respondent never had and has no bona fide intent to use in commerce or resume use in commerce Respondent's Claimed Mark in connection with any goods or services.

20. Upon information and belief, Respondent never had and has no bona fide intent to use in commerce or resume use in commerce Respondent's Claimed Mark in connection with Respondent's Claimed Goods.

21. Upon information and belief, Respondent never had and has no bona fide intent to use in commerce or resume use in commerce Respondent's Claimed Mark in connection with the goods originally applied-for in U.S. Application No. 77/789,289, which later matured into U.S. Reg. No. 3,962,466.

22. Upon information and belief, Respondent has not made use in commerce and has abandoned Respondent's Claimed Mark within the meaning of Section 45 of the Lanham Act, 15 U.S.C. § 1127, and therefore U.S. Registration No. 3,962,466 should be cancelled.

COUNT 3

23. Petitioner hereby restates and realleges allegations 1 through 22 above as if made fully herein below.

24. On July 24, 2009, Respondent filed Trademark Application Serial No. 77/789,289, that later matured into Registration No. 3,962,466, declaring under oath that Respondent's Claimed Mark was currently in use in commerce for each of the following goods: "Golf shirts; Hats; Hooded sweat shirts; Jogging pants; Long-sleeved shirts; Lounge pants; Pants; Pique shirts; Polo shirts; Shirts; Shirts and short-sleeved shirts; Shirts for infants, babies, toddlers and children; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Sport shirts; Sweat pants; Sweat shirts; T-shirts; Tee shirts; Yoga pants" to support a filing basis under Section 1(a) of the Trademark Act.

25. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "golf shirts."

26. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "hats."

27. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "hooded sweat shirts."

28. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "jogging pants."

29. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "long-sleeved shirts."

30. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "loung pants."

31. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "pants."

32. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "pique shirts."

33. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "polo shirts."

34. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "shirts."

35. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "shirts and short-sleeved shirts."

36. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "shirts for infants, babies, toddlers and children."

37. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "short-sleeved or long-sleeved t-shirts."

38. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "short-sleeved shirts."

39. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "sport shirts"

40. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "sweat pants."

41. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "sweat shirts."

42. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "T-shirts."

43. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "tee shirts."

44. Upon information and belief, on July 24, 2009, Respondent was not using in commerce Respondent's Claimed Mark in connection with "yoga pants."

45. Upon information and belief, on July 24, 2009, Respondent made material false statements to the U.S. Patent and Trademark Office when he declared he was using in commerce Respondent's Claimed Mark in connection with the goods identified with a filing basis of current use in commerce under Section 1(a) of the Trademark Act.

46. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "golf shirts."

47. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "hats."

48. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "hooded sweat shirts."

49. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "jogging pants."

50. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "long-sleeved shirts."

51. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "lounging pants."

52. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "pants."

53. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "pique shirts."

54. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "polo shirts."

55. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "shirts."

56. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "shirts and short-sleeved shirts."

57. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "shirts for infants, babies, toddlers and children."

58. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "short-sleeved or long-sleeved t-shirts."

59. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "short-sleeved shirts."

60. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "sport shirts"

61. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "sweat pants."

62. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "sweat shirts."

63. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "T-shirts."

64. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "tee shirts."

65. Upon information and belief, on July 24, 2009, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "yoga pants."

66. Respondent's false statements are material because the U.S. Patent and Trademark Office detrimentally relied on Respondent's false statements on July 24, 2009, that Respondent's Claimed Mark was being used in commerce in connection with all the goods covered by the Section 1(a) basis as of July 24, 2009, and thereby issued Registration No. 3,962,466.

67. Upon information and belief, Respondent knew on July 24, 2009, that he was not using Respondent's Claimed Mark in commerce in connection with all the goods covered by the Section 1(a) basis as of July 24, 2009, in Application Serial No. 77/789,289.

68. Upon information and belief, Respondent knew on July 24, 2009, that he was not using Respondent's Claimed Mark in commerce in connection with all the goods covered by the Section 1(a) basis as of July 24, 2009, in Application Serial No. 77/789,289, and Respondent made the aforementioned material false statements with an intent to deceive the U.S. Patent and Trademark Office.

69. Upon information and belief, Respondent knowingly made false and material representations of fact in connection with Application Serial No. 77/789,289, and fraudulently procured registration of Respondent's Claimed Mark within the meaning of Section 14 of the Lanham Act, 15 U.S.C. § 1064, and therefore U.S. Registration No. 3,962,466 should be cancelled.

COUNT 4

70. Petitioner hereby restates and realleges allegations 1 through 69 above as if made fully herein below.

71. On March 11, 2011, Respondent filed a Statement of Use declaring under oath that Respondent's Claimed Mark was being used in commerce in connection with "Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Capri pants; Cargo pants; Dress shirts; Fleece vests; Knit shirts; Moisture-wicking sports shirts; Rugby shirts; Wind pants; Wind shirts."

72. Upon information and belief, on March 11, 2011, Respondent was not using in commerce Respondent's Claimed Mark in connection with "athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms."

73. Upon information and belief, on March 11, 2011, Respondent was not using in commerce Respondent's Claimed Mark in connection with "capri pants."

74. Upon information and belief, on March 11, 2011, Respondent was not using in commerce Respondent's Claimed Mark in connection with "cargo pants."

75. Upon information and belief, on March 11, 2011, Respondent was not using in commerce Respondent's Claimed Mark in connection with "dress shirts."

76. Upon information and belief, on March 11, 2011, Respondent was not using in commerce Respondent's Claimed Mark in connection with "fleece vests."

77. Upon information and belief, on March 11, 2011, Respondent was not using in commerce Respondent's Claimed Mark in connection with "knit shirts."

78. Upon information and belief, on March 11, 2011, Respondent was not using in commerce Respondent's Claimed Mark in connection with "moisture-wicking sports shirts."

79. Upon information and belief, on March 11, 2011, Respondent was not using in commerce Respondent's Claimed Mark in connection with "rugby shirts."

80. Upon information and belief, on March 11, 2011, Respondent was not using in commerce Respondent's Claimed Mark in connection with "wind pants."

81. Upon information and belief, on March 11, 2011, Respondent was not using in commerce Respondent's Claimed Mark in connection with "wind shirts."

82. Upon information and belief, Respondent made material false statements to the U.S. Patent and Trademark Office when Respondent declared under oath on March 11, 2011, that he was using in commerce Respondent's Claimed Mark in connection with all the goods identified in the Statement of Use.

83. Upon information and belief, on March 11, 2011, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath

that he was using Respondent's Claimed Mark in commerce in connection with "athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms."

84. Upon information and belief, on March 11, 2011, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "capri pants."

85. Upon information and belief, on March 11, 2011, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "cargo pants."

86. Upon information and belief, on March 11, 2011, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "dress shirts."

87. Upon information and belief, on March 11, 2011, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "fleece vests."

88. Upon information and belief, on March 11, 2011, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "knit shirts."

89. Upon information and belief, on March 11, 2011, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "moisture-wicking sports shirts."

90. Upon information and belief, on March 11, 2011, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "rugby shirts."

91. Upon information and belief, on March 11, 2011, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "wind pants."

92. Upon information and belief, on March 11, 2011, Respondent made a material false statement to the U.S. Patent and Trademark Office when Respondent declared under oath that he was using Respondent's Claimed Mark in commerce in connection with "wind shirts."

93. Respondent's false statements are material because the U.S. Patent and Trademark Office detrimentally relied on Respondent's false statements on March 11, 2011, that Respondent's Claimed Mark was being used in commerce in connection with all the goods identified in the Statement of Use for Application Serial No. 77/789,289, as of March 11, 2011, and thereby issued Reg. No. 3,962,466.

94. Upon information and belief, Respondent knew on March 11, 2011, that he was not using Respondent's Claimed Mark in commerce in connection with the goods identified in the Statement of Use for Application Serial No. 77/789,289.

95. Upon information and belief, Respondent knew on March 11, 2011, that he was not using Respondent's Claimed Mark in commerce in connection with the goods identified in the Statement of Use for Application Serial No. 77/789,289, and Respondent made the aforementioned material false statements with an intent to deceive the U.S. Patent and Trademark Office.

96. Upon information and belief, Respondent knowingly made false and material representations of fact in connection with Respondent's Claimed Mark and fraudulently procured registration of Respondent's Claimed Mark within the meaning of Section 14 of the Lanham Act, 15 U.S.C. § 1064, and therefore U.S. Registration No. 3,962,466 should be cancelled.

WHEREFORE, pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064, Petitioner respectfully requests that the Board grant its petition for cancellation and order the cancellation of U.S. Registration No. 3,962,466 and award Petitioner any further relief the Board deems equitable.

Respectfully Submitted,
WINTHROP & WEINSTINE, P.A.

Dated: August 5, 2016



Stephen R. Baird
Wesley D. Anderson

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ATTORNEYS FOR PETITIONER
ASKOV HOLDINGS, LLC

12270990v1

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

Askov Holdings, LLC)	
)	
Petitioner,)	Registration No. 3,962,466
)	
v.)	Cancellation No. _____
)	
Roger D. Popa d/b/a Petoskey Pete's)	
)	
Respondent.)	

CERTIFICATE OF SERVICE BY US MAIL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Sara K. Bell, of the City of Minneapolis, County of Hennepin, in the State of Minnesota, being duly sworn, says that on the 5th day of August 2016, she mailed by Certified Mail, a true and correct copy of the

1. Petition to Cancel

in the above-captioned action to the following last known address of record for Respondent and Respondent's representative, to-wit:

Roger Popa
DBA Petoskey Pete's
630 West 10th St
Traverse City, MI 49684



Sara K. Bell