

ESTTA Tracking number: **ESTTA762289**

Filing date: **08/03/2016**

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	Mr Andrew R Flanders		
Entity	Individual	Citizenship	United States
Address	4406 s 189th st seatac, WA 98188 UNITED STATES		

Correspondence information	Andrew R Flanders 4406 s 189th st seatac, WA 98188 UNITED STATES andrewflanders@gmail.com Phone:206 679 9107
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Registration Subject to Cancellation

Registration No	1169205	Registration date	09/15/1981
Registrant	DIMARZIO, INC. 1338 RICHMOND TERRACE STATEN ISLAND, NY 10310 UNITED STATES		

Goods/Services Subject to Cancellation

Class 015. First Use: 1974/02/00 First Use In Commerce: 1974/02/00 All goods and services in the class are cancelled, namely: Electronic Sound Pickup for Guitars
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Grounds for Cancellation

The mark comprises matter that, as a whole, is functional	Trademark Act Sections 14(1) and 2(e)(5), or Section 23 if on Supplemental Register
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Attachments	Request_cancellation_of_s73150505_r1169205.txt(1698 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	/Andrew Flanders/
Name	Andrew Flanders
Date	08/03/2016

1. The trademark bearing the serial 73150505 and registration 1169205 was filed by DiMarzio Inc., a maker of aftermarket electric guitar accessories, in 1981. Section 14 of the Lanham Act, 15 U.S.C. 1064, allows me to request that this trademark be cancelled.
2. The basis for this request of cancellation is that the trademark serves an aesthetic functional purpose.
3. The trademark entitles DiMarzio to exclusive sale of solid "cream" colored humbucker pickups. Decades prior to DiMarzios trademark filing, the plastic parts that encompass and mount the humbuckers in electric guitars had typically be cream colored.
4. Perhaps the most famous example is the 1959 Gibson Les Paul, a design that is still in production today. The guitar's two humbucking pickups have metallic covers, but the plastic parts which retain them are solid cream in color.
5. The trademark prevents consumers from purchasing aftermarket humbucking pickups that will color-match the existing cream colored plastic retainers included with their electric guitars, unless they choose to purchase from DiMarzio Inc.
6. This trademark results in DiMarzio maintaining a monopoly over an aesthetic consideration. In accordance with "15 U.S. Code 1052", section e:
 7. "No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it ... comprises any matter that, as a whole, is functional."
8. I request that this trademark be cancelled on these grounds. As musical performance is a visual as well as audible medium, a guitar's aesthetics are critical to it's function.