ESTTA Tracking number: **ESTTA773889**
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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	Nexttrip Holdings, Inc.		
Entity	Corporation	Citizenship	Florida
Address	2690 Weston Road Ste 200 Weston, FL 33331 UNITED STATES		

Attorney information	Joshua M. Gerben, Esq. Gerben Law Firm, PLLC 1050 Connecticut Ave NW Suite 500 Washington, DC 20036 UNITED STATES jgerben@gerbenlawfirm.com Phone:202-294-2287

Registration Subject to Cancellation

Registration No	3847446	Registration date	09/14/2010
Registrant	True North Trading Inc c/o Augustine Law Firm Denver, CO 80237 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 2009/12/01 First Use In Commerce: 2009/12/01 All goods and services in the class are cancelled, namely: Providing a web site that features informal instruction on traveling, children,traveling with children, and products related to children and traveling

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	Nexttrip_Petition to Cancel_Sept 30.pdf(292175 bytes)

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	/Joshua M. Gerben/
Name	Joshua M. Gerben, Esq.
Date	09/30/2016

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

Nexttrip Holdings, Inc. Petitioner, v. True North Trading Inc. Registrant,	Cancellation No.: Mark: BABY TRAVEL BABY TRAVEL MADE EASY and Design Registration No: 3847446

PETITION TO CANCEL

Nexttrip Holdings, Inc. ("Petitioner") hereby files its Petition to Cancel pursuant to Fed. R. Civ. P. 15(a), petitioning for the cancellation of Registration No. 3847446 for the BABY TRAVEL BABY TRAVEL MADE EASY and Design mark, registered to True North Trading Inc. ("Registrant"), and states as follows:

1. Petitioner is Florida corporation.

2. The United States Patent and Trademark Office ("USPTO") records identify Registrant, with an address of PO Box 370-121, Denver, CO 80237 as the owner of U.S. Registration No. 3847446 (the "Registrant's Registration") for the mark BABY TRAVEL BABY TRAVEL MADE EASY and Design (the "Registered Mark"), in International Class 41 for "Providing a web site that features informal instruction on traveling, children, traveling with children, and products related to children and traveling" (the "Registrant's Services"). On September 13, 2016, Registrant filed a Section 8 affidavit and signed a declaration specifying that it was using the Registered Mark in commerce as of the September 13, 2016 filing date and had not abandoned it.

3. Petitioner filed an application to register the mark TRAVEL MADE EASY (the "Petitioner's Mark") with the United States Patent and Trademark Office on April 4, 2016 for "Providing a web site featuring technology that enables internet users to book travel; Providing a web site featuring technology that enables users to book plane tickets, hotel rooms and rental cars" in International Class 42 under Lanham Act § 1(b) and was assigned serial number 86/962691. (the " '691 Application").

4. Petitioner filed an application to register the mark NEXTTRIP TRAVEL MADE EASY and Design (the "Petitioner's Mark") with the United States Patent and Trademark Office on September 8, 2016 for "Providing a web site featuring technology that enables internet users to book travel; Providing a web site featuring technology that enables users to book plane tickets, hotel rooms and rental cars" in International Class 42 under Lanham Act § 1(b) and was assigned serial number 87/164676. (the " '676 Application").

5. On July 21, 2016, the USPTO Trademark Examining Attorney issued a § 2(d) refusal of '691 Application based on a likelihood of confusion with the Registered Mark.

ABANDONMENT BASED ON NON-USE

6. On information and belief, Registrant is not using the Registered Mark and has not used the Registered Mark since on or before September 18, 2013.

7. On information and belief, Registrant has presumptively abandoned the Registered Mark in connection with Registrant's Services based on a failure to use the mark in commerce for at least three years without intent to resume use.

8. Petitioner's research has uncovered the following factual basis for its claims. All allegations made on information and belief may be proven with information solely within control of Registrant:

a. Registrant's website does not match the renewal specimen it submitted to the United States Patent and Trademark Office. Registrant simply used the same specimen it submitted in its original trademark application showing a website that, as of the filing date of this Petition to Cancel, did not use the Registered Mark.

b. Petitioner's search of relevant online and retail marketplaces showed no offers for Registrant's Services bearing the Registered Mark.

c. Petitioner's search for any of Registrant's advertising and social media uncovered no advertising, marketing or listings purporting to offer any of the Registrant's Services bearing the Registered Mark;

d. Petitioner has found, through its research, no use of the Registered Mark in connection with Registrant's Services to support proof of any use of the Registered Mark for at least three years.

9. Given the above facts, Petitioner alleges that Registrant has abandoned the Registered Mark within the meaning of Section 45 of the Lanham Act, 15 U.S.C. § 1127.

10. Because Registrant's registration gives it at least a *prima facie* exclusive right in the Registered Mark, Petitioner maintains that its legal use and registration of the TRAVEL MADE EASY mark will be impaired by continued registration of the Registered Mark.

11. In fact, on July 21, 2016, a USPTO Trademark Examining Attorney issued a § 2(d) refusal of the '691 Application because the Trademark Examining Attorney was concerned that the Registered Mark and Petitioner's, if co-existing, could cause confusion in the marketplace.

12. Petitioner also believes that the Registered Mark will be cited against the '676 Application, causing further harm to Petitioner.

FRAUD

13. Upon information and belief, Petitioner alleges that Registrant's Mark was renewed based on a fraudulent Section 8 declaration made on September 13, 2016, in which Registrant signed a sworn statement that the mark was in use on all of Registrant's Services in interstate commerce. Upon information and belief, said statement was false. Petitioner alleges that Registrant was not using Registrant's Mark on September 13, 2016, and had presumptively abandoned the mark before filing the Section 8 renewal.

14. Upon information and belief, Registrant made these declarations knowing that it did not have sales in interstate commerce and had abandoned its mark.

15. Petitioner's research has uncovered the following factual basis for its claims. All allegations made on information and belief may be proven with information solely within control of Registrant:

a. Registrant's website does not match the renewal specimen it submitted to the United States Patent and Trademark Office. Registrant simply used the same

specimen it submitted in its original trademark application showing a website that, as of the filing date of this Petition to Cancel, did not use the Registered Mark.

b. Petitioner's search of relevant online and retail marketplaces showed no offers for Registrant's Services bearing the Registered Mark.

c. Petitioner's search for any of Registrant's advertising and social media uncovered no advertising, marketing or listings purporting to offer any of the Registrant's services bearing the Registered Mark;

d. Petitioner has found, through its research, no use of the Registered Mark in connection with Registrant's Services to support proof of any use of the Registered Mark for at least three years.

e. Evidence from Internet archives of Registrant's website shows that the Registered Mark had not been used for at least three years prior to the filing of the Section 8 renewal.

16. As there is no evidence that Registrant was using the Registered Mark in connection with its services on the date it submitted its Section 8 renewal, Petitioner alleges that Registrant knowingly submitted a statement claiming the Registrant was using the Registered Mark in interstate commerce with the intent of defrauding the United States Patent and Trademark Office to renew a federal registration to which it was not entitled.

17. Registrant's fraudulent declaration was material to the USPTO's decision to renew Registrant's Mark, as a valid sworn declarations are required to renew a trademark registration.

18. Because the registration of Registrant's Registration presumably gives it at least a *prima facie* exclusive right in Registrant's Mark, Petitioner maintains that its legal use and registration of the TRAVEL MADE EASY mark will be impaired by the continued registration of Registrant's Mark and thus, Petitioner believes it will be damaged.

19. In view of the above, Registrant's Registration is not entitled to continued registration, as Registrant has abandoned all use of the mark and has no intent to resume use of the mark and Registrant perpetrated fraud on the USPTO.

20. By reason of all of the foregoing, Petitioner will be gravely damaged by the continued registration of the Registered Mark.

WHEREFORE, Petitioner is damaged by U.S. Registration No. 3847446 and prays that the same be canceled immediately, and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

Dated: September 30, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2016, a true and correct copy of the foregoing Petition to Cancel is being served by First-Class mail on Registrant as shown in the correspondence record in the Office, as follows:

LEIGH AUGUSTINE
Augustine Law Firm, LLC
5994 SOUTH HOLLY STREET #400
GREENWOOD VILLAGE, COLORADO UNITED STATES 80111

Respectfully submitted,

Dated: September 30, 2016

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