

ESTTA Tracking number: **ESTTA774665**

Filing date: **10/05/2016**

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	Ebates Performance Marketing, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	160 Spear Street, Suite 1900, San Francisco, CA 94105 UNITED STATES		

Attorney information	Brian M. Davis VLP Law Group LLP 5960 Fairview Rd; Suite 400 Charlotte, NC 28210 UNITED STATES bdavis@vlpawgroup.com Phone:7042456515		
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Registration Subject to Cancellation

Registration No	4046350	Registration date	10/25/2011
Registrant	Holberg, Jordan R. Apt. 4W New York, NY 10036 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2011/06/11 First Use In Commerce: 2011/06/11 All goods and services in the class are cancelled, namely: On-line contests awarding merchandise of others based upon the voting preferences of users, to promote the sale of products and services of others

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	SHOPULARITY Petition to Cancel.pdf(41685 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 Overnight Courier on this date.

Signature	/Brian M. Davis/
Name	Brian M. Davis

Date	10/05/2016
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Ebates Performance Marketing, Inc.,

Cancellation No.: _____

Petitioner

US Reg. No.: 4,046,350

vs.

Jordan R. Holberg,

Respondent

Mark: SHOPULARITY

PETITION FOR CANCELLATION

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

Ebates Performance Marketing, Inc. ("Petitioner"), a Delaware corporation with an address at 160 Spear Street, Suite 1900, San Francisco, California 94105, believes that it has been and will continue to be injured by the presence on the Principal Register of U.S. Registration No. 4,046,350 for the mark SHOPULARITY (hereafter referred to as the "SHOPULARITY Registration"). Accordingly, Petitioner hereby applies for cancellation of the SHOPULARITY Registration.

According to the U.S. Patent and Trademark Office records, the name and address of the current owner of the subject registration is Jordan R. Holberg ("Respondent"), Apt. 4W 374, West 46th Street, New York, New York 10036.

As grounds for cancellation, Petitioner alleges:

1. On April 12, 2016, Petitioner filed Application Serial Nos. 86/ 972,922 and 86/973,336 to register the marks SHOPULAR and SHOPULAR (Stylized) (the "SHOPULAR Applications"). The application for the mark SHOPULAR covers the goods and services in International Classes 9, 35 and 36 listed below, and the SHOPULAR (Stylized) application covers the services in International Classes 35 and 36 below.

Int. Class 9 - Downloadable software in the nature of a mobile application that displays advertising and promotions for the products and services of others and allows the user to obtain cash back and rebates from participating stores or service providers as part of a customer loyalty program.

Int. Class 35 - Advertising and marketing services, namely, promoting the goods and services of others; customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes

Int. Class 36 - Providing cash and other rebates for making purchases from or applying for a service of participating stores or service providers as part of a customer loyalty program

2. The SHOPULAR Applications have been refused registration in Office Actions dated July 20, 2016 based on an alleged likelihood of confusion with the SHOPULARITY Registration that covers “On-line contests awarding merchandise of others based upon the voting preferences of users, to promote the sale of products and services of others” in Int. Class 35.

3. Upon information and belief, Respondent appears to have ceased use of its SHOPULARITY mark in the United States in the ordinary course of trade for at least the last three consecutive years, with no intent to resume use of the mark on the listed services.

4. Upon information and belief, Respondent has abandoned the mark that is the subject of the SHOPULARITY Registration in the United States, as the term “abandonment” is defined in 15 U.S.C. § 1127, and therefore Respondent requests cancellation of the SHOPULARITY Registration pursuant to 15 U.S.C. § 1064(3) .

5. As a result of the foregoing, Petitioner is and will be damaged by the continued presence of the SHOPULARITY Registration on the Principal Register.

WHEREFORE, Petitioner prays that Registration Reg. No. 4,046,350 be canceled pursuant to 15 U.S.C. § 1064.

Respectfully submitted,

/Brian M. Davis/

Brian M. Davis

VLP Law Group LLP
5960 Fairview Road
Suite 400
Charlotte, North Carolina 28210
Telephone: (704) 245-6515

ELECTRONIC MAILING CERTIFICATE

I hereby certify that the PETITION FOR CANCELLATION is being submitted electronically through the Electronic System for the Trademark Trial and Appeal Board (ESTTA) on this 5th day of October, 2016.

/Brian M. Davis/

Brian M. Davis

VLP Law Group LLP

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have caused a copy of the foregoing PETITION FOR CANCELLATION to be deposited with an overnight courier this 5th day of October, 2016 in an envelope addressed to the Respondent's address of record in the United States Patent and Trademark Office for the subject registration set out below.

Jordan R. Holberg
Apt. 4W
374 West 46th Street
New York New York 10036

/Brian M. Davis/
Brian M. Davis
VLP Law Group LLP