

Petition to Cancel

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

In the matter of trademark Registration No.. 2229759

For the mark **"THE BERKSHIRE MOUNTAIN MUSIC FESTIVAL"**

Date registered March 2, 1999

Rinaldo Del Gallo, III
(in his individual capacity)
79 Nancy Avenue
Pittsfield, MA 01201
PHONE: 413-443-3150

and

The Berkshire Fatherhood Coalition
(An unincorporated, non-profit association of individuals.)

v.

I'm the Middle Man Presents, Inc., Corporation Massachusetts
16 Farrington Ave.
Allston, Massachusetts 02134

The above-identified petitioner believes that it/he/she will be damaged by the above-identified registration, and hereby petitions to cancel the same.

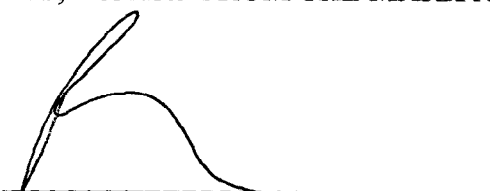
The grounds for cancellation are as follows:

1. The applicant for the mark "Berkshire Mountain Music Festival" moved into a market where the "Berkshire Music Festival" had already been being used by the National Music Foundation.
2. The use of the "Berkshire Music Festival" can be seen as early as 1998, as shown by the critique offered by Soth Rogovoy. As can be seen, the event started in 1997, well before the filing date of the mark of April 20, 1998.
3. The "Berkshires" is the very most western county in Massachusetts, and is known for its culture, and is descriptive word many people in the arts and entertainment industry would like to use.

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UNITED STATES PATENT AND TRADEMARK OFFICE

4. The term "music festival" is obviously description.
5. The term "mountain" is descriptive.
6. The mark "Berkshire Mountain Music Festival" should never had issued with disclaiming use of the words "Berkshire" or "Music Festival."
7. The mark "Berkshire Mountain Music Festival" is too similar to the mark "Berkshire Music Festival" for it to be regarded as distinct enough for trademark status—its practically the same expression.
8. The mark "Berkshire Mountain Music Festival" is purely descriptive.
9. The term "Berkshire Music Mountain Music Festival," has been used in the past
10. While not passing on the validity of the mark (as this is up for the Trademark Office to decide), Mr. Del Gallo and the Berkshire Fatherhood Coalition would not object to the mark as registered if it bears the following disclaimer:

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MUSIC FESTIVAL," or "BERKSHIRE," OR "BERKSHIRE" IN CONJUNCTION WITH THE WORDS "MUSIC FESTIVAL," APART FROM THE MARK AS SHOWN



Rinaldo Del Gallo, III
79 Nancy Avenue
Pittsfield, MA 01201
Phone: 413-443-3150

April 16, 2003

PETITION UNDER
Manuel of Trademark Examination and Procedure
Rule 1708

**PETITION TO WAIVE THE FEE FOR FILING A PETITION TO WAIVE THE RULES
AND
PETITION TO WAIVE THE FEE FOR FILING A CANCELLATION PETITION**

MTEP states under Rule 1708:

Waiver of Rules

“Under 37 C.F.R. §§2.146(a)(5) and 2.148, the Director may waive any provision of the Rules that is not a provision of the statute, when an extraordinary situation exists, justice requires, and no other party is injured.”

Affidavit

I Rinaldo Del Gallo, III hereby attest under penalty of perjury to the following:

I am financially unable to pay for cost of filing this petition without depriving myself or my dependants the necessities of life, that I have a wife and child, that I currently owe over \$95,00 in debt currently owed, that I have defaulted on my student loans and that this is a matter of public record in the Berkshire Superior Court House of Pittsfield, Massachusetts, and that I have about \$17,000 of other debts owed, and that my income for fiscal year 2002 was less than \$6,000, and that my current earnings are no greater.

The Berkshire Fatherhood Coalition is a unincorporated association having no substantial assets and is non-profit in nature, goal and practice.

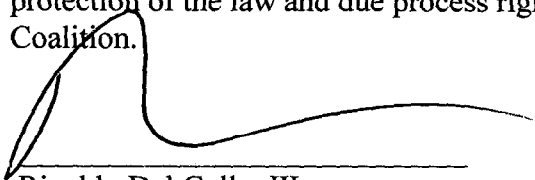
I currently only have about \$500 in my savings and checking account.

We intend to have a music festival entitled the “Berkshire Music Festival,” which is to promote shared parenting. An admission will not be charged for this event and we (“we” being the members of the Berkshire Fatherhood Coalition) do not intend to profit from the event—we just want to break even and promote the awareness of both children in a child’s life, both before and after divorce.

I was notified today by the “Berkshire Music Mountain Festival,” whose serial number of their trademark registration is 2229759, that we would be violating their trademark by using “The Berkshire Music Festival on the Lake,” despite the fact that when they entered the market, another organization had been running “The Berkshire Music Festival” for years and despite the fact that “Berkshire” is geographical (the name of the county both music festival will be in) and despite the fact that “Music Festival” is descriptive and disclaimed.

I would like to petition for the cancellation of the mark "The Berkshire Mountain Music Festival on the Lake." However, I am financially unable to do so, as is the Berkshire Fatherhood Coalition.

Also, at stake is a liberty interest (using the term "Berkshire Music Festival on the Lake,") which encompasses first amendment issues so that I may use common descriptive terms to accurately convey information about the event. Accordingly, I petition for the Director of Trademarks munificence for waiver of the petitioning fees in this instant case in order to secure the equal protection of the law and due process rights of both myself and the Berkshire Fatherhood Coalition.

A handwritten signature in black ink, appearing to read "Rinaldo Del Gallo, III". The signature is written in a cursive style with a large, sweeping initial 'R' and a long, horizontal tail that extends to the right.

Rinaldo Del Gallo, III
April 15, 2003

TTAB

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Commissioner of Trademarks
2900 Crystal Drive
Arlington, Virginia
22202-3513



04-18-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #76

April 16, 2003

Dear Commissioner of Trademarks:

Please find enclosed my "Petition to Waive The Fee For Filing a Petition to Waive The Rules" and "Petition to Waive the Fee For Filing a Cancellation Petition." Since I am petitioning to waive the fees, no fee is included.

Sincerely,

Rinaldo Del Gallo III

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