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07-08-2002

U.S. Patent & TMO: TM Mail Rcpt Dt. #22

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

BOYDS COLLECTION, LTD., )

Petitioner, )

v. )

JAMES M. OWENS, )

Registrant-Respondent )

Petition For Cancellation

Cancellation No:

Registration No: 2,444,673

Date of Issue: April 17, 2001

07/24/2002 CMAY11 00000065 2444673

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TRADEMARK TRIAL AND APPEAL BOARD

CERTIFICATE OF MAILING BY EXPRESS MAIL ET835346083 US (Express Mailing Label No.) I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Service under 37 C.F.R. 1.10 on July 5, 2002 and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia, 22202-3513.

Lawrence M. Haws  
Name of Representative

Signature

July 5, 2002  
Date of Signature

**PETITION FOR CANCELLATION**

BOYDS COLLECTION, Ltd., ("Petitioner"), a Pennsylvania corporation having its principal place of business at 350 South Street, McSherrystown, PA 17344, acting by and through its undersigned attorneys, believes that it is or will be damaged by Registration No. 2,444,673 and hereby petitions to cancel same.

Description of Respondent's registration: Filed on October 29, 1997 for the mark "BEARS & HARES" registered on the Principle Register, in class 35 for retail catalogs, mail order, and retail store services featuring toys, clothing, souvenirs, novelty items, housewares and general merchandise; claiming first use on June 1, 1999.



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U.S. Patent & TMO/tm Mail Rcpt Dt. #22

**CHERSKOV & FLAYNIK**

LAWYERS

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Michael J. Cherskov

(Typed or printed name of person mailing paper or fee)

Signature

July 5, 2002

Date of Deposit

July 5, 2002

ASSISTANT COMMISSIONER FOR  
TRADEMARKS  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Sir:

We enclose herewith the Petition for Cancellation by THE BOYDS COLLECTION of the mark "BEARS & HARES" having Registration Number 2,444,673 (Attny Dkt # 0107/01185) together with a photocopy of said petition, \$300 check to cover the filing fee pursuant to 37 C.F.R. 2.6(a)(16), and self-addressed stamped postcard.

Respectfully,

CHERSKOV & FLAYNIK

By

Michael J. Cherskov  
Reg. No. 33,664

encl.: Cancellation Petition; (original + photocopy)  
Check for \$300.00; and  
Self-addressed Postcard

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As Grounds of this Petition, it is alleged that:

**1. Lanham Act 2(d): Prior Adoption and Use of Similar Mark**

Petitioner, since May 1993, has been, and is now using the mark "BEARS AND HARES YOU CAN TRUST" in connection with its newsletter and the sale of mail order goods and services such as collectible figurines, toys, clothing, souvenirs, novelty items, and housewares.

Said use of this mark has been valid and continuous since said date of first use and has not been abandoned. Said mark of the petitioner is symbolic of the extensive goodwill and consumer recognition built up by the petitioner through substantial amounts of time and effort in advertising and promotion.

In view of the similarity of the respective marks (i.e., Petitioner's BARES & HARES mark versus Respondent's BEARS AND HARES YOU CAN TRUST mark) and the related nature of the goods of the respective parties, it is alleged that Respondent's mark so resembles Petitioner's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

**2. Lanham Act 2(a): False Suggestion of a Connection of Applicant's Mark with Petitioner**

Petitioner, since May 1993, has been, and is now, operating under the designation "BEARS AND HARES YOU CAN TRUST" in the area of collectible figurines and toys. Said use has been valid and continuous since said date of first use and the relevant class of the public has come to associate petitioner with said designation.


In re: BEARS & HARES  
Registration No: 2,444,673  
Petition for Cancellation  
Page -3-

In view of the similarity of respondent's mark with petitioner's designation, and in view of the related nature of the uses thereof, it is alleged that respondent's mark consists of and comprises matter that may falsely suggest a connection with petitioner.

WHEREFORE, petitioner prays that said Registration No. 2,444,673 be canceled, and that this petition be sustained in favor of petitioner. Petitioner hereby appoints CHERSKOV & FLAYNIK, to act as attorneys for petitioner herein, with full power to prosecute said cancellation, to transact all relevant business with the Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this cancellation.

Respectfully submitted,

**CHERSKOV & FLAYNIK**

By 

Michael J. Cherskov (PTO Reg. No. 33,664)  
CHERSKOV & FLAYNIK  
The Civic Opera Building, Suite 1447  
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(312) 621-1330

Dated: July 5, 2002

Attorneys for the Petitioner