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Filing date: **11/08/2005**

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

<b>Name</b>	Callaway Golf Company		
<b>Entity</b>	Corporation	<b>Citizenship</b>	Delaware
<b>Address</b>	2180 Rutherford Road Carlsbad, CA 92008 UNITED STATES		

<b>Attorney information</b>	Lisa M. Martens Fish & Richardson P.C. 12390 El Camino Real San Diego, CA 92130 UNITED STATES tmdocsd@fr.com, hyde@fr.com Phone:(858) 678-5070		
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#### Registration Subject to Cancellation

<b>Registration No</b>	2881273	<b>Registration date</b>	09/07/2004
<b>Registrant</b>	MERCHANTS OF GOLF, INC. 1400 W. 240th St. Harbor City, CA 90710 UNITED STATES		
<b>Goods/Services Subject to Cancellation</b>	Class 028. First Use: 20030801, First Use In Commerce: 20030801 Goods/Services: GOLF CLUBS, GOLF BALLS, GOLF BAGS, GOLF GLOVES, SHAFTS FOR CLUBS, GOLF ACCESSORIES, NAMELY, GOLF BALL RETRIEVERS, HEAD COVERS FOR GOLF CLUBS, GOLF BAG TAGS AND TEES		

<b>Attachments</b>	Pet to Cancel.PDF ( 7 pages )
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<b>Signature</b>	/lisa m martens/
<b>Name</b>	Lisa M. Martens
<b>Date</b>	11/08/2005

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

CALLAWAY GOLF COMPANY,

Petitioner,

v.

MERCHANTS OF GOLF, INC.,

Registrant.

In the matter of Registration No. 2,881,273

For the mark TOUR X

Registered on September 7, 2004

Cancellation No.: \_\_\_\_\_

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**PETITION TO CANCEL**

Callaway Golf Company, (“Petitioner” or “Callaway Golf”), a Delaware corporation having a principal place of business at 2180 Rutherford Road, Carlsbad, California 92008, believes that it is damaged and will continue to be damaged by the registration of the mark TOUR X, Registration No. 2,881,273, and hereby petitions to cancel the same pursuant to the provisions of 15 U.S.C. § 1064.


The grounds for cancellation are as follows:


1. Callaway Golf, founded in 1982, is a Carlsbad, California manufacturer of golf products, and makes and sells the famous BIG BERTHA<sup>®</sup> line of golf clubs. The company is built around the philosophy of designing, creating, building, and selling DEMONSTRABLY SUPERIOR AND PLEASINGLY DIFFERENT<sup>®</sup> golf products. The Callaway Golf product design approach limits the company’s introduction of new clubs, balls, and putters to products that represent a significant improvement not only upon the products of competitors, but also upon its own products.

2. Callaway Golf's superior products have launched it to the forefront of golf club manufacturers. With approximately 3,000 employees and yearly sales of \$793 million, \$814 million, and \$934 million over the last three years, Callaway Golf is the number one manufacturer of premium golf clubs in the world. Many of the game's top professional players use and/or endorse Callaway Golf's products, including Arnold Palmer, Phil Mickelson, Annika Sorenstam, and Thomas Bjorn.

3. Callaway Golf's product lines are the result of intensive and very expensive research and development, product experimentation, and the diligent pursuit and protection of intellectual property rights. Over the last three years, Callaway Golf has invested more than \$90 million dollars researching and developing new product technologies and designs, many of which are protected by patents and registered trademarks.

4. Callaway Golf has been using the "X" mark in various forms in connection with the sale of golf equipment since at least as early as early as 1992. Callaway Golf owns at least ten U.S. trademark registrations for its "X" family of marks for use on golf equipment, including the following:

<u>Mark</u>	<u>Reg. No. and date of registration</u>	<u>Goods</u>	<u>Date of first use in commerce</u>
X-OUTS 	1,872,099 Jan. 3, 1995	Golf balls	Aug. 15, 1992
XL CLASSIC	2,256,821 June 29, 1999	Golf balls	Sept. 15, 1997
X-12	2,242,061 April 27, 1999	Golf clubs	Jan. 20, 1998

<u>Mark</u>	<u>Reg. No. and date of registration</u>	<u>Goods</u>	<u>Date of first use in commerce</u>
<b>XL 2000</b>	2,364,705 July 4, 2000	Golf balls	Jan. 31, 1999
<b>X-14</b>	2,392,366 Oct. 3, 2000	Golf clubs	Dec. 15, 1999
<b>XL 3000</b>	2,572,234 May 21, 2002	Golf balls	Sept. 24, 2001
<b>XDF</b> 	2,786,502 Nov. 25, 2003	Golf clubs	Sept. 10, 2002
<b>X-16</b>	2,765,551 Sept. 16, 2003	Golf clubs, golf club head covers, golf bags and golf balls	Sept. 13, 2002
<b>X-18</b>	2,924,089 Feb. 1, 2005	Golf clubs, golf bags, golf club headcovers	Sept. 16, 2004
<b>HX Tour</b>	2,995,281 Sept. 13, 2005	Golf ball	March 31, 2003

5. Callaway Golf has sold millions of dollars worth of golf equipment bearing Callaway Golf's "X" family of marks, and has spent millions of dollars promoting the marks.

6. Consumers of golf equipment throughout the United States recognize the "X" family of marks and associate the products offered thereunder with Callaway Golf. Accordingly, Callaway Golf has built up considerable and valuable goodwill in the "X" family of marks, and has strong rights in and to its "X" family of marks as used on golf equipment. Callaway Golf's trademark rights in Callaway Golf's "X" family of marks date back to at least as early as 1992.

7. Callaway Golf's "X" family of marks includes the TOUR X mark for use on golf club shafts. Callaway Golf began using the TOUR X mark in commerce on golf club shafts at least as early as January 2003.

8. Callaway Golf's "X" family of marks also includes the X TOUR mark for use on golf clubs, golf head covers, golf balls, and golf bags. Callaway Golf began using the X TOUR mark in commerce on golf club shafts at least as early as September of 2004, and Callaway Golf has continuously used the X TOUR mark in commerce since that date.

9. Callaway Golf filed a U.S. trademark application (Ser. No. 78/493,802) for its X TOUR mark on October 4, 2004. On May 9, 2005, the U.S. Patent and Trademark Office ("PTO") issued an office action refusing registration of Callaway Golf's X TOUR mark based on confusing similarity between Callaway Golf's mark and a prior registration (Reg. No. 2,881,273) for the mark TOUR X, owned by Merchants of Golf, Inc. ("Respondent").

10. On information and belief, Respondent, a California corporation having a place of business at 1400 West 240th Street, Harbor City, California, is the record owner of Registration No. 2,881,273 for the mark TOUR X for use on "golf clubs, golf balls, golf bags, golf gloves, shafts for clubs, golf accessories, namely, golf ball retrievers, head covers for golf clubs, golf bag tags and tees."

11. On information and belief, Respondent develops, manufactures, sells, offers for sale, and/or distributes golf equipment.

12. Respondent's registration issued on September 7, 2004, within five years of the date of this Petition to Cancel.

13. Respondent has alleged that it first used the TOUR X mark in commerce on the identified goods in August of 2003.

14. Callaway Golf adopted and began using its TOUR X mark in connection with golf club shafts at least as early as January 2003: (a) before Respondent's claimed date of first use of the TOUR X mark; and (b) before the priority date of Respondent's registration.

15. Callaway Golf adopted and began using its "X" family of marks in connection with golf equipment: (a) approximately eleven years before Respondent's claimed date of first use of the TOUR X mark; and (b) approximately eleven years before the priority date of Respondent's registration.

16. On information and belief, Callaway Golf's priority date in its "X" family of marks, including the TOUR X mark, precedes any priority date upon which Respondent may rely.

17. Callaway Golf's TOUR X mark and Respondent's TOUR X mark are identical in sight, sound, and commercial impression.

18. The goods identified in Respondent's registration include "shafts for clubs," which are identical to the goods provided by Callaway Golf under the TOUR X mark.

19. The mark Respondent has registered so resembles Callaway Golf's TOUR X mark and Callaway Golf's "X" family of marks, as to be likely, when used on or in connection with Respondent's goods, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to mistakenly believe that the goods of Respondent offered under the TOUR X mark are produced, sponsored, endorsed, or approved by Callaway Golf, or are in some way affiliated, connected, or associated with Callaway Golf, all to the detriment of Callaway Golf. Therefore, Respondent's U.S. Trademark Registration No. 2,881,273 should be cancelled under 15 U.S.C. §§ 1052(d) and 1064.

20. Callaway Golf's "X" family of marks is distinctive and famous, and has been distinctive and famous since prior to Respondent's alleged first use of the TOUR X mark.

21. The mark Respondent has registered dilutes the distinctive quality of Callaway Golf's famous "X" family of marks, to the detriment of Callaway Golf. Therefore, Respondent's U.S. Trademark Registration No. 2,881,273 should be cancelled under 15 U.S.C. §§ 1052 (last paragraph), 1064, and 1125.

22. The existence of Registration No. 2,881,273 for the mark TOUR X damages and will continue to damage Callaway Golf, as the registration confers upon Respondent various statutory presumptions to which it is not entitled in view of Callaway Golf's prior use of its distinctive and famous "X" family of marks.

23. The existence of Registration No. 2,881,273 for the mark TOUR X damages and will continue to damage Callaway Golf, as the mark continues to dilute the distinctive quality of Callaway Golf's "X" family of marks.

WHEREFORE, pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064, Callaway Golf respectfully requests that Registration No. 2,881,273 be canceled and that this Petition to Cancel be sustained.

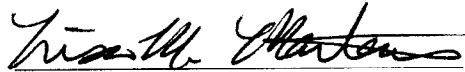
Please apply the \$300 fee to Deposit Account No. 06-1050.



Please direct all communications concerning the above-captioned cancellation proceeding to the undersigned attorneys at the address indicated.

Respectfully Submitted,

Date 11-8-05



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ATTORNEYS FOR  
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