

ESTTA Tracking number: **ESTTA82028**

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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	Instigator, LLC		
Entity	limited liability company	Citizenship	Georgia
Address	506 Earlvine Way Kennesaw, GA 30152 UNITED STATES		

Attorney information	Kristofer R. Schleicher Kristofer R. Schleicher, LLC Post Office Box 1817 Roswell, GA 30077 UNITED STATES krsllc@mindspring.com Phone:678-409-2461
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### Registration Subject to Cancellation

Registration No	2245788	Registration date	05/18/1999
Registrant	World Class Studios, Inc. P. O. Box 510549 Melbourne Beach, FL 32951 UNITED STATES		
Goods/Services Subject to Cancellation	Class 025. First Use: 1997/12/05 , First Use In Commerce: 1997/12/05 Goods/Services: CLOTHING, NAMELY, HATS, PANTS, SHIRTS, AND SOCKS		
Grounds for Cancellation	The registration was obtained fraudulently.		

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Signature	/Kristofer R. Schleicher/
Name	Kristofer R. Schleicher
Date	05/23/2006

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

In the matter of trademark Registration No. 2245788  
Serial No. 75424287

INSTIGATOR, LLC, through its sole member, ADAM K. BLANK,

v.

WORLD CLASS STUDIOS, INC.

PETITION TO CANCEL

INSTIGATOR, LLC  
ADAM K. BLANK, Sole Member  
c/o Kristofer R. Schleicher  
Kristofer R. Schleicher, LLC  
Attorneys at Law  
Post Office Box 1817  
Roswell, Georgia 30077

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

A. Challenged Mark

The challenged mark (“CM”) is one of 14 similar marks registered by World Class Studios, Inc. (“Registrant”), all of which have a dominant feature of an alligator in a human-like pose wearing human apparel. The CM was registered on May 18, 1999 by World Class Studios, Inc., a Florida corporation located in Melbourne Beach, Florida. The class of goods an/or services is international class no. 025 (clothing, namely, hats, pants, shirts and socks). The registration recites the first use date and first use in commerce date as December 5, 1997. The last significant event in the prosecution history of the CM was the acceptance of a Section 8 (six year) affidavit on February 2, 2005. To the best of Petitioner’s knowledge, the name and address of the current owner of the registration are:

Mr. Henry Wardwell  
World Class Studios, Inc.  
P. O. Box 510549  
Melbourne Beach, FL 32951.

## B. Standing of Petitioner

Instigator, LLC, has standing to bring this action to cancel under 15 USC § 1064 because the CM is preventing registration of the mark owned by Instigator, LLC. submitted under trademark application no. 78616793-1. The CM is an alligator standing upright like a human flexing his bicep on his left arm/leg. The alligator is wearing pants, a belt, a muscle shirt, and sunglasses. The word “Instigator” appears beneath the alligator (the “CM”). The Petitioner’s mark consists of a person with a round head wearing a shirt with a lower case “i” on it at the beginning of the stylized word “Instigator.” The person has his hands in his pockets and wears large sneakers. The drawing of the person is also intended to represent the first “I” in the word “Instigator.” The Petitioner’s mark is also submitted under class 025.

## C. Grounds for Cancellation

Petitioner brings this Petition on grounds that the registration of the CM was obtained fraudulently through the examiner’s reliance on the Registrant’s false and fraudulent claims of bona fide use of the CM in commerce and false and fraudulent representations that the specimens submitted with the application and Section 8 affidavit were used on the goods in commerce, as more fully set forth below:

### 1.

The Registrant falsely and fraudulently stated that the CM was used in commerce prior to registration. The application for the CM was based on use in commerce under 15 USC § 1051(a). Prior to submitting the application for competing mark, Mr. Adam K. Blank, sole manager of Petitioner, spoke with Mr. Henry Wardwell, owner of World Class Studios, Inc., on two occasions. Mr. Wardwell clearly indicated that he *planned* to use the CM and related marks as characters in children’s books (“Gator Tales” or something to that effect) and that he did not see any conflict between the challenger’s intent to use the competing mark on t-shirts, sportswear and other casual clothing marketed to mainly skateboarding and other “X-Games” enthusiasts. Kristofer R. Schleicher, Esquire, attorney for Petitioner, also spoke with Mr. Wardwell in January of 2006 regarding World Class Studio, Inc.’s use of the CM. Mr. Wardwell stated that although he had not planned to use the CM on clothing at the time he spoke with Mr. Blank, he had since entered into negotiations with certain partners and/or investors to *begin* producing goods in commerce using the CM and other marks owned by World Class Studios, Inc. on a clothing line. Thus, as late as January, 2006, the CM still had not been used in commerce.

### 2.

The Registrant falsely and fraudulently represented that there was and is a bona fide use of the CM in the ordinary course of trade. Section 45 of the Trademark Act (15 USC § 1127) defines “use in commerce” as “the bona fide use of a mark in the ordinary course of trade, and not merely to reserve a right in a mark.” The mark must be placed on goods that are sold or transported in commerce. Petitioner finds no evidence

that the CM has ever been used on any goods transported in commerce and statements from the owner of the CM confirm this conclusion. It appears that the CM and the 13 similar marks registered by its owner were registered solely to reserve rights in marks that had not been used in commerce but now, some seven years later, still have not been used in commerce.

3.

The Registrant falsely and fraudulently represented that the CM was eligible for federal registration. At most, the CM has been used purely in intrastate commerce and was not eligible for federal registration. To the best of Petitioner's knowledge, the owner of the CM has not sold or transported any goods bearing the mark nor has the owner offered the goods for interstate sale via the internet. Therefore, it appears that the owner's statements and the original application and in the Section 8 affidavit concerning use in commerce were fraudulent.

4.

The Registrant falsely and fraudulently stated the date of first use and date of first use in commerce in application for the CM and the Section 8 affidavit. As stated above, to the best of Petitioner's knowledge, the CM has never been affixed to goods in class 025 that were transported or sold in commerce. It is now too late for the owner of the CM to amend the original application for the CM to specify a date of use that is later than the filing date of the application. 37 CFR § 2.71(c)(2). The application and the Section 8 affidavit do not identify any specific item in a class to which the specified dates pertain nor do the specimens show the mark on any goods in the class. *See* 37 CFR §§ 2.34(a)(1)(iii), 2.34(a)(1)(IV), 2.76(c) and 2.88(c).

5.

The Registrant falsely and fraudulently represented that the specimens submitted in support of the application for the CM show a mark as used on or in connection with the goods. 15 USC § 1051(a)(1); 37 CFR § 2.56(a). The specimens submitted with the CM application and the Section 8 application are insufficient because they are not labels, tags, or containers for the goods or a display associated with the goods. *See* 37 CFR § 2.56(d)(1). The specimens submitted are merely photocopies and pictures of the mark illustrating what the mark looks like and are not specimens of the CM as the mark was actually used on or in connection with goods and commerce. The specimens submitted in support of the CM are not even reproductions or photocopies of marks meeting the requirements of the regulation. The specimens do not show the whole article to which the mark is applied or enough of the article so that the nature of the article can be identified. *See* TMET 904.08. Petitioner submits that this is because the marks have never been used on any goods.

WHEREFORE, Petitioner prays that its petition be granted and that Registration No. 2245788 (Serial No. 75424287) be cancelled.

By: \_\_\_\_\_

Kristofer R. Schleicher  
Attorney for Petitioner Instigator, LLC

Date: \_\_\_\_\_