

ESTTA Tracking number: **ESTTA178297**

Filing date: **12/03/2007**

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	Niagara Henderson		
Entity	Individual	Citizenship	UNITED STATES
Address	c/o Jeffrey H. Brown 180 N. Stetson, Suite 2000 Chicago, IL 60601 UNITED STATES		

Attorney information	Jeffrey H. Brown Michael Best & Friedrich LLP 180 N. Stetson, Suite 2000 Chicago, IL 60601 UNITED STATES jhbrown@michaelbest.com, dlrupick@michaelbest.com Phone:312.222.0800		
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**Registration Subject to Cancellation**

Registration No	3158060	Registration date	10/17/2006
Registrant	Svengirly Music, Inc. P.O. Box 91894 Pasadena, CA 91109 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 009. First Use: 1977/03/03 First Use In Commerce: 1977/03/03 All goods and services in the class are cancelled, namely: Compact discs featuring musical sound recordings; Phonograph records featuring musical sound recordings
Class 025. First Use: 2004/11/01 First Use In Commerce: 2004/11/01 All goods and services in the class are cancelled, namely: Belts; Cardigans; Hats; Jackets; T-shirts; Tank tops

**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Related Proceedings	Cancellation proceeding regarding Reg. 3134736
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**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	DESTROY ALL MONSTERS
Goods/Services	entertainment services, namely, exhibitions, personal appearances and performances by an artist, performer and entertainer and in connection with phonorecords featuring musical sound recordings, publications, artwork, and clothing

Attachments	c0817784.pdf ( 8 pages )(306035 bytes )
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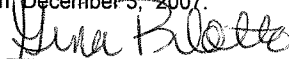
### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jeffrey Brown/
Name	Jeffrey H. Brown
Date	12/03/2007

CERTIFICATE OF TRANSMISSION

I hereby certify that this Petition to Cancel is being transmitted by the Electronic System for Trademark Trials and Appeals to the United States Patent and Trademark Office on ~~December 3, 2007~~.



Signature of person sending paper

Gina A. Bilotto

Typed or printed name of person signing paper

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

In the Matter of Registration No. 3,158,060

Issued: October 17, 2006

Mark: DESTROY ALL MONSTERS

HENDERSON, NIAGARA )

Petitioner, )

v. )

SVENGIRLY MUSIC, INC., )

Respondent. )

Cancellation No.

**PETITION FOR CANCELLATION**

As and for her petition for cancellation, Niagara Henderson alleges as follows:

1. Niagara Henderson, professionally known as "Niagara," is a United States citizen with a business address of c/o Jeffrey H. Brown, Michael Best & Friedrich LLP, 180 N. Stetson Avenue, Suite 2000, Chicago, Illinois 60601 ("Petitioner").

2. Petitioner is an internationally renowned visual artist, performer and recording artist who founded the musical group DESTROY ALL MONSTERS in 1973.

3. On information and belief, SVENGIRLY MUSIC, INC. is an Arizona corporation with an address at P.O. Box 91894, Pasadena, CA 91109 (“Respondent”).

4. On November 11, 2005 Respondent filed an application, Application Serial No. 78/752516 (“Respondent’s Application”), seeking registration of the mark DESTROY ALL MONSTERS for “compact discs featuring musical sound recordings; phonograph records featuring musical sound recordings” in International Class 09 and for “belts; cardigans; hats; jackets; t-shirts; tank tops” in International Class 025 (such goods are referred to as “Respondent’s Goods”).

5. Respondent’s Application for the mark DESTROY ALL MONSTERS for Respondent’s Goods matured to Registration No. 3,158,060 on October 17, 2006 (“Respondent’s Registration”).

6. Respondent is the owner of record of Respondent’s Registration.

7. Long prior to any first use by Respondent, Petitioner was using and Petitioner continues to use the mark DESTROY ALL MONSTERS in connection with entertainment services, namely, exhibitions, personal appearances and performances by an artist, performer and entertainer (“Petitioner’s Services”) and in connection with phonorecords featuring musical sound recordings, publications, artwork, and clothing (“Petitioner’s Goods”, and together with Petitioner’s Services, “Petitioner’s Goods and Services”).

8. Petitioner's use of the mark DESTROY ALL MONSTERS in connection with Petitioner's Goods and Services predates any date upon which Respondent relies in Respondent's Registration.

9. On information and belief, neither Respondent nor Respondent's related company nor a licensee of Respondent was using the mark DESTROY ALL MONSTERS in connection with one or more of the following goods as of the date of first use claimed in Respondent's Application, namely, March 3, 1977: compact discs featuring musical sound recordings; phonograph records featuring musical sound recordings.

10. On information and belief, neither Respondent nor Respondent's related company nor a licensee of Respondent was using the mark DESTROY ALL MONSTERS in connection with one or more of the following goods as of the date of first use claimed in Respondent's Application, namely, November 1, 2004: belts; cardigans; hats; jackets; t-shirts; tank tops.

11. On information and belief, neither Respondent nor Respondent's related company nor a licensee of Respondent was using the mark DESTROY ALL MONSTERS in connection with all of Petitioner's Goods as of the date of the filing of Respondent's Application, namely November 11, 2005.

12. On information and belief, neither Respondent nor Respondent's related company nor a licensee of Respondent was using the mark DESTROY ALL MONSTERS in connection with all of Petitioner's Goods as of the date of the Respondent's amendment to its dates of use clause in Respondent's Application, namely June 29, 2006.

## FRAUD

13. Respondent has committed fraud on the Patent and Trademark Office in connection with Respondent's Application.

14. Respondent has knowingly made false, material representations of fact in connection with Respondent's Application.

15. Respondent, having been warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the Respondent's Application or any resulting registration, declared that:

(a) Respondent is the owner of the trademark sought to be registered in Respondent's Application, when, in fact, Respondent knew that Petitioner owned such trademark;

(b) Respondent is entitled to use such mark in commerce, when, in fact, Respondent knew that Petitioner had not granted to Respondent any such right;

(c) no other person, firm, corporation, or association has the right to use the mark set forth in Respondent's Application in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive, when, in fact, Respondent knew that Petitioner had and has such right;

(d) all statements in Respondent's Application made of Respondent's own knowledge are true; and that all statements in Respondent's Application made on information and belief are believed to be true, when in fact, Respondent knew that certain of such statements were not true;

(e) Respondent or Respondent's related company or a licensee of Respondent was using the mark DESTROY ALL MONSTERS in connection with all of Petitioner's Goods at least as early as the dates of first use set forth in Respondent's Registration, namely March 3, 1977 with respect to "compact discs featuring musical sound recordings; phonograph records featuring musical sound recordings" in International Class 09 and November 1, 2004 with respect to "belts; cardigans; hats; jackets; t-shirts; tank tops" in International Class 025, when in fact, Respondent knew that such statements were not true;

(f) Respondent or Respondent's related company or a licensee of Respondent was using the mark DESTROY ALL MONSTERS in connection with all of Petitioner's Goods as of November 11, 2005, the date of the filing of Respondent's Application, when in fact, Respondent knew that such statements were not true; and

(g) Respondent or Respondent's related company or a licensee of Respondent was using the mark DESTROY ALL MONSTERS in connection with all of Petitioner's Goods as of June 29, 2006, the date of the Respondent's amendment to its dates of use clause in Respondent's Application, when in fact, Respondent knew that such statements were not true.

### **LIKELIHOOD OF CONFUSION**

16. Petitioner has since long before the filing date of Respondent's Application, and the dates of first use claimed therein, continuously used, and presently uses, the mark DESTROY ALL MONSTERS in interstate commerce throughout the United States in connection with Petitioner's Goods and Services.

17. Petitioner has, at great expense, continuously engaged in the sale and promotion of Petitioner's Goods and Services in connection with the mark DESTROY ALL MONSTERS. Petitioner has, at great expense, extensively and continuously offered to the public goods and services under the mark DESTROY ALL MONSTERS. By reason of her efforts and the expenditure of considerable sums for promotion, and by virtue of the excellence of the goods and services sold by Petitioner under the mark DESTROY ALL MONSTERS, the public and trade have come to recognize the mark DESTROY ALL MONSTERS as signifying Petitioner and the goods and services offered under Petitioner's mark DESTROY ALL MONSTERS, and Petitioner has built up exceedingly valuable goodwill in connection with the goods and services offered under and in connection with the mark DESTROY ALL MONSTERS.

18. The DESTROY ALL MONSTERS mark set forth in Respondent's Registration is identical to Petitioner's DESTROY ALL MONSTERS mark and is used in connection with sound recordings and articles of clothing and is therefore confusingly similar in sight, sound, meaning, and commercial impression to Petitioner's DESTROY ALL MONSTERS mark. Petitioner's goods and services provided under Petitioner's DESTROY ALL MONSTERS mark and those provided by Respondent under the mark set forth in Respondent's Registration are promoted through the same channels of trade for sale to, and use by, the same category of purchasers.

19. Petitioner is being damaged and will be damaged by the continuing registration of Respondent's Registration because, unless canceled, such registration will remain as a cloud on Petitioner's legal right to use her DESTROY ALL MONSTERS mark in derogation of Petitioner's prior and superior rights in her DESTROY ALL MONSTERS mark.




WHEREFORE, Petitioner prays that Registration No. 3,158,060 be canceled. The USPTO is hereby authorized to deduct the filing fee for this petition from Deposit Account 501965.

The PTO is authorized to deduct the filing fee for this Petition for Cancellation from deposit account 501965.

Dated: December 3, 2007

NIAGARA HENDERSON

By:   
One of her attorneys

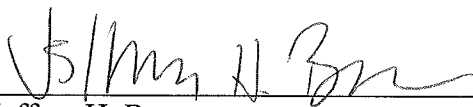
Jeffrey H. Brown  
Luke W. DeMarte  
Michael Best & Friedrich LLP  
Two Prudential Plaza  
180 N. Stetson Avenue, Suite 2000  
Chicago, IL 60601  
(312) 222-0800

Andrew T. Baran  
Michael A. Novak  
Elizabeth A. Favaro  
Giarmarco, Mullins & Horton, P.C.  
Tenth Floor Columbia Center  
101 W. Big Beaver Road  
Troy, Michigan 48084  
(248) 457- 7000

**CERTIFICATE OF SERVICE**

The undersigned certifies that on December 3, 2007, the foregoing Petition for Cancellation was served upon Registrant's attorney by depositing a copy of said document in the U.S. mail in an envelope addressed to:

Edward T. Saadi, Esq.  
EDWARD T. SAADI, LLC  
970 Windham Court, Suite 7  
Boardman OH 44512

  
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Jeffrey H. Brown