

ESTTA Tracking number: **ESTTA235633**

Filing date: **09/09/2008**

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	Clear Channel Outdoor, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	2201 East Camelback Road Suite 500 Phoenix, AZ 85016 UNITED STATES		

Attorney information	Jane Shay Wald Irell & Manella LLP 1800 Avenue of the Stars Los Angeles, CA 90067 UNITED STATES jwald@irell.com Phone:(310) 203-7017
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**Registration Subject to Cancellation**

Registration No	3485914	Registration date	08/12/2008
Registrant	FOSTER & KLEISER BILLBOARD COMPANY, INC. Suite 2003 23901 Calabasas Road Calabasas, CA 913028808 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 035. First Use: 2008/05/01 First Use In Commerce: 2008/05/01 All goods and services in the class are cancelled, namely: Rental of billboard space for advertising purposes
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**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)

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	FOSTER & KLEISER (FOSTER AND KLEISER)		
Goods/Services	Rental of billboard space for advertising purposes and related services		

Attachments	Peition to Cancel with POS.pdf ( 3 pages )(142663 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	/Jane Shay Wald/
Name	Jane Shay Wald
Date	09/09/2008

## PETITION TO CANCEL

Clear Channel Outdoor, Inc., a Delaware company ("Petitioner"), having an address at 2201 East Camelback Road, Suite 500, Phoenix, Arizona 85016, believes it is damaged by Registration 3,485,914 by FOSTER & KLEISER BILLBOARD COMPANY, INC., a California corporation ("Respondent") and incorporates by reference herein all the facts, law and elements of its electronic pleading to which this document is a part.

As grounds for the Petition to Cancel, it is alleged that:

1. Petitioner has, by a predecessor-in-interest and directly, used the term FOSTER & KLEISER (and FOSTER AND KLEISER) as a service mark and trade name ("Petitioner's Mark") for rental of billboard space for advertising purposes in commerce in the United States. This use has been substantially continuous since a time long prior to the May 1, 2008 first use date claimed by Respondent for the registered mark. Petitioner enjoys great good will in connection with its mark.

2. The registration issued to Respondent harms Petitioner pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. Sec. 1052(d), insofar as Respondent's registered mark so resembles a mark or trade name previously used in the United States by Petitioner and not abandoned, so as to be likely, when used in connection with the services of Respondent, to cause confusion, or mistake, or to deceive. Petitioner's good will is being and will continue to be harmed by Respondent's acts alleged herein, and the subject registration sought to be canceled.

3. On information and belief, Respondent had actual knowledge of Petitioner's prior rights in Petitioner's Mark since a time prior to filing the application that became the subject registration. Nonetheless, Respondent's Authorized Signatory, Dennis G. Harkavy,

on May 31, 2007, knowingly made a Declaration that applicant (now Respondent) believed itself to be entitled to use such mark in commerce and that to the best of Declarant's knowledge and belief, no other person, firm, corporation or association has the right to use the mark 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. On information and belief, Respondent and its Declarant knew that this Declaration was false, and was material to the PTO's decision to allow the registration, and intended that deception.

4. Respondent submitted a Statement of Use which consisted of web site screens falsely describing the history of the FOSTER & KLEISER mark, and falsely attributing to itself the ownership of the subject mark which, on information and belief, it knew to be owned by Petitioner. On information and belief, Respondent knew that this information was false, and was material to the PTO's decision to allow the registration, and intended that deception.

5. Petitioner's Mark symbolizes Petitioner to the relevant public for the services Respondent claims in its registration herein sought to be canceled, and continued registration to Respondent gives color of rights to Respondent to which Respondent is not entitled, thus harming Petitioner. Petitioner's good will is being and will continue to be harmed by Respondent's acts alleged herein, and by the subject registration sought to be canceled.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067-4276.

On September 9, 2008, I served the foregoing document described as Petition to Cancel on each interested party, as follows:

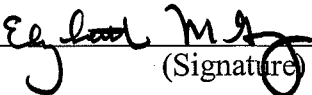
Foster & Kleiser Billboard Company, Inc.  
Attn: Dennis G. Harkavy, Esq.  
23901 Calabasas Road, Suite 2003  
Calabasas, CA 91302-8808

- (BY MAIL) I placed true copies of the foregoing document in a sealed envelope addressed to each interested party, as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Irell & Manella LLP, Los Angeles, California. I am readily familiar with Irell & Manella LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

Executed on September 9, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Elizabeth M. Gray  
\_\_\_\_\_  
(Type or print name)

  
\_\_\_\_\_  
(Signature)