

ESTTA Tracking number: **ESTTA237007**

Filing date: **09/16/2008**

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	Ragdoll Worldwide Ltd		
Entity	Private Limited Company	Citizenship	United Kingdom
Address	Iver Heath, Pinewood Studios Pinewood Road, Buckinghamshire, SLO ONH UNITED KINGDOM		

Attorney information	Mitchell D. Bernstein, Esq. Moses & Singer LLP 405 Lexington Avenue New York, NY 10174 UNITED STATES mbernstein@mosessinger.com, pboisson@mosessinger.com Phone: 212 554-7868
----------------------	--

Registration Subject to Cancellation

Registration No	1564798	Registration date	11/07/1989
Registrant	IRWIN TOY LIMITED 43 HANNA AVENUE TORONTO, ONTARIO, M6K 1X6 CANADA		

Goods/Services Subject to Cancellation

Class 028. First Use: 1988/03/07 First Use In Commerce: 1988/08/04 All goods and services in the class are cancelled, namely: DOLLS
--

Grounds for Cancellation

Abandonment	Trademark Act section 14
-------------	--------------------------

Attachments	petition for cancellation.PDF (4 pages)(264357 bytes)
-------------	--

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	/Mitchell Bernstein/
Name	Mitchell D. Bernstein, Esq.
Date	09/16/2008

PETITION FOR CANCELLATION

Petitioner Ragdoll Worldwide Ltd (“Petitioner”), by and through its attorneys, Moses & Singer LLP, hereby petitions this Honorable Board to order the cancellation of United States trademark registration No. 1564798, registered November 7, 1989 to Irwin Toy Ltd (“Irwin”) for the mark OOPSIE DAISY (the “Registration”).

To the best of Petitioner’s knowledge, the Registrant’s last known address was 43 Hanna Avenue, Toronto Ontario Canada M6K 1X6.

Petitioner believes that it will be damaged by the above-identified Registration and hereby petitions to cancel same for the detailed reasons set forth herein.

The grounds for this Petition are as follows:

1. Petitioner is a British private liability company with a principal place of business at Pinewood Studios, Pinewood Road, Iver Heath, Buckinghamshire, SLO ONH United Kingdom.
2. The Registration sought to be cancelled herein covers the words OOPSIE DAISY as applied to dolls in International Class 28.
3. Upon information and belief, Registrant began selling its OOPSIE DAISY crawling doll in the U.S. in 1988. Upon further information and belief, the OOPSIE DAISY doll was initially very successful but was soon recalled due to design problems.
4. Upon information and belief, the OOPSIE DAISY product was relaunched in 1989, but it never reached the success of the initial launch.
5. Upon information and belief, Irwin only used the OOPSIE DAISY mark in conjunction with the crawling doll.
6. Upon information and belief, Registrant was sold to a private investment group in 2001 and thereafter filed for bankruptcy in 2003.
7. Upon information and belief, Registrant was officially shut down in 2003 and the former owners of Registrant thereafter purchased back some of the names and products through their new company, iToys.
8. Upon information and belief, Registrant has not sold products in the U.S. under the OOPSIE DAISY brand for many years.
9. Upon information and belief, the OOPSIE DAISY doll was no longer available for sale in the United States as of Registrant’s 2003 bankruptcy filing.
10. Upon information and belief, no OOPSIE DAISY dolls have been marketed in the U.S. since Registrant’s 2003 bankruptcy filing, if not since several years earlier.

11. Under 15 U.S.C. §1127, Registrant's non-use of the OOPSIE DAISY mark for two consecutive years constituted *prima facie* abandonment.

12. Based on all of the foregoing, the Registration should be cancelled on the basis of abandonment.

13. On or about August 10, 2007, Petitioner filed an application to register the word mark UPSY DAISY in International Class 028 and was assigned Serial No. 77/252614. Petitioner's UPSY DAISY mark is the name of a character in the television series "In the Night Garden" which is broadcast in many countries worldwide. Petitioner's Class 028 UPSY DAISY application covered the following proposed goods:

Toys, games and playthings, namely, gymnastic and sporting articles namely, gymnastic horizontal bars; gymnastic parallel bars; gymnastic training stools; gymnastic vaulting horses; handheld electronic devices that incorporate electronic game software; bubble-making wand and solution sets; card games; flying discs; kites; infant's rattles; dolls and dolls' clothing, accessories for dolls, dolls' houses, dolls' furniture, doll's furniture accessories; teddy bears; stuffed toys; soft sculpture plush toys; soft sculpture toys; soft sculpture plush toys with electronic components; soft sculpture plush musical pull-string toys; building blocks; toy action figures; toy vehicles; scale model vehicles; toy building structures and toy vehicle tracks; jigsaw puzzles; musical toys; board games; balloons and playground balls; pogo sticks; stilts; toy scooters; toy sleighs; snowboards; water boards; surf boards; infant play sets for interactive and reactive play, namely, crib carousels, crib gyms, crib mobiles; play sets consisting of clothing and accessories for use with toy action figures; jokes and novelty items, namely, paper masks, noise-makers, wind up toys, water squirting toys, magic tricks, party favors in the nature of small toys; jigsaw puzzles, manipulative puzzles and cube-type puzzles; costume masks; toy masks; kites; decorations for Christmas trees; Christmas trees of synthetic material; ride-on toys; battery-operated ride-on toys; skateboards; skates; skating boots with skates attached; gloves for games, namely baseball gloves and golf gloves; puppets; marionettes; baseball and softball bats; playground balls; sport balls; foam balls; soccer balls; baseballs; basketballs; exercise weights; marbles; paddling pools; play swimming pools; floats for bathing and swimming; inflatable bath and pool toys. toy pails; toy shovels; swimming aids, namely, armbands and rings used as flotation devices; arm pads for use in athletics, namely, baseball, basketball, cycling, football, hockey, martial arts, soccer, skateboarding and wrestling, shin pads for use in athletics, namely, baseball, basketball, cycling, football, hockey, martial arts, skateboarding, soccer and wrestling, and knee pads for use in baseball, basketball, cycling, football, hockey, martial arts, soccer, skateboarding, soccer and wrestling; toboggans; snow sleds for recreational use.

14. Petitioner's UPSY DAISY application engendered an Office Action dated November 27, 2007, which raised a likelihood of confusion with the OOPSIE DAISY registration.

15. Petitioner responded to such Office Action on May 27, 2008 and its response was met with a final Office Action dated July 8, 2008 which maintained the earlier refusal.

16. Although Petitioner disagrees that there could be a likelihood of confusion between the abandoned OOPSIE DAISY and its UPSY DAISY television character, the continued registration of Registrant's long-abandoned mark plainly interferes with Petitioner's effort to register UPSY DAISY.

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained in favor of Petitioner, that Registration No. 1564798 be cancelled immediately, and that the application for Serial No. 77/252614 be published for opposition in due course.

Dated: September 16, 2008

Respectfully submitted,

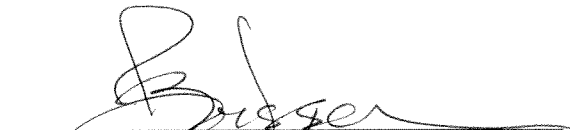


Mitchell D. Bernstein
Moses & Singer LLP
Attorney for Petitioner
Ragdoll Worldwide Ltd.
405 Lexington Avenue
New York, NY 10174-1299
212 554-7800

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of PETITION FOR CANCELLATION has been served via First Class Mail, postage prepaid to Applicant at the address below on September 16, 2008.

Richard M. Rabkin, Esq.
245 Delaware Street
Westfield, New Jersey 07090


Patrick Boisson
Trademark Paralegal