

ESTTA Tracking number: **ESTTA251860**

Filing date: **11/29/2008**

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	Wok n' Roll Express, Inc.		
Entity	Corporation	Citizenship	Illinois
Address	665A Pasquinelli Drive Westmont, IL 60559 UNITED STATES		

Attorney information	MARC N. BLUMENTHAL LAW OFFICE OF MARC N. BLUMENTHAL 19 S LA SALLE ST STE 1500 Suite 1500 CHICAGO, IL 60603-1413 UNITED STATES marcnblawyer@sbcglobal.net Phone:312 641-0616
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Registration Subject to Cancellation

Registration No	1358531	Registration date	09/03/1985
Registrant	STW ACQUISITION CORP. 134-19 33RD AVENUE FLUSHING, NY 11354 UNITED STATES		

Goods/Services Subject to Cancellation

Class 042. First Use: 1983/11/26 First Use In Commerce: 1983/12/26 All goods and services in the class are cancelled, namely: RESTAURANT SERVICES
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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)
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Attachments	Cancellation.11-29-08.pdf (5 pages)(75459 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	/Marc N. Blumenthal/
Name	MARC N. BLUMENTHAL
Date	11/29/2008

In the Matter of Registration No. 1358531

Date of Issue: 09/03/1985

Wok n' Roll Express, Inc.

Petitioner,

Cancellation No.:

v.

STW Acquisition Corp.

Registrant.

BOX TTAB/FEE

Assistant Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

PETITIONER FOR CANCELLATION

Wok n' Roll Express, inc., a corporation organized and existing under the laws of the State of Illinois, located and doing business at 665A Pasquinelli Drive, Westmont, IL 60559 ("Petitioner"), brings this Cancellation of the mark "WOK & ROLL" Registration No. 138531 for all goods and services in Class 42, restaurant services:

As grounds for this Cancellation, it is alleged:

1. On May 4, 2005, Ben T. Wong, as President of Registrant, STW Acquisition Corp., signed a Combined Declaration of Use in Commerce and Application for Renewal of Registration of Mark Under Sections 8 and 9 of the Trademark Act of 1946.

2. STW Acquisition Corp. is shown on the Trademark Office records to be the last assigned owner and as stated above, the Registrant for the subject mark.

3. In the Combined Declaration of Use in Commerce and Application for Renewal of Registration of Mark Under Sections 8 and 9 of the Trademark Act of 1946, among other statements, Mr. Wong made the following statement:

“The undersigned further declares that he is properly authorized to execute this document on behalf of the owner; that the owner is using the mark in commerce on or in connection with the goods and/or services identified above, and that the facts set forth herein are true...”

4. On June 26, 2002, almost three years before the renewal application was filed, and the declaration was signed, the Registrant/Owner was dissolved by proclamation by the State of New York. An investigation of the records available to be accessed on the New York State corporation website shows that the current status of the Registrant/Owner of the subject mark is “INACTIVE.” This inactive status has continued through November 29, 2008. Previous telephone calls on at least three occasions to that department confirmed the information that STW Acquisition Corp. has not been active since June 26, 2002.

5. Provided the information on the website is accurate, and the information conveyed in the telephone calls is accurate, the Combined Declaration of Use in Commerce and Application for Renewal of Registration of Mark Under Sections 8 and 9 of the Trademark Act of 1946 includes false information. This false information includes:

1) The Registrant was not using the mark, since the corporation was not eligible to do business, and according to the New York State website is still inactive.

2) Mr. Wong did not have authorization to sign the declaration and make the statements he made since there was no active corporate entity at the time the statements were made, for whom he was acting.

6. Making false or misleading statements in a declaration provides grounds to bring a cancellation action under the Lanham Act, 15 U.S.C. § 1064(3).

7. The Registrant's mark, renewed under the false pretense that the Registrant/Owner was a valid corporation at the time the declaration was signed, and that the Registrant/Owner was using the mark in commerce, when in fact the Registrant/Owner, could not, according to the records of the State of New York conduct any business, has been cited against the applicant Work n' Roll Express, Inc.'s ("Applicant") application Serial No. 77236212 and used as a basis for refusing registration.

8. Provided the information furnished by the State of New York, Department of State is valid as appears below as accessed on its website, on September 16, 2008 and as confirmed by telephone conversation with a representative of that department; and accessed again on November 29, 2008; and provided the Registrant/Owner, was not legally permitted to conduct any business after June 26, 2002 to the date of this Petition, which has now exceeded six years, the registration for the subject mark has not been properly maintained, the renewal process was deficient and the registration is invalid and must be cancelled.

Results of Website Search 09/16/2008

Selected Entity Name: STW ACQUISITION CORP.

Selected Entity Status Information Current Entity Name: STW ACQUISITION CORP.

Initial DOS Filing Date: JULY 27, 1998

County: NASSAU

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: INACTIVE

Selected Entity Address Information DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

BEN T. WONG

216-15 27TH AVE

BAYSIDE, NEW YORK, 11360

Chairman or Chief Executive Officer

BEN T. WONG

216-15 27th AVE

BAYSIDE, NEW YORK 11360

Principal Executive Office

BEN T. WONG

216-15 27TH AVE

BAYSIDE, NEW YORK, 11360

Registered Agent

NONE

9. This Petition has been filed timely pursuant to 15 U.S.C. §1064 (3), which permits the filing of a Cancellation proceeding after the registration has been in effect for more than five years, based on specific grounds; said grounds being set forth above in Paragraphs 6, 7 and 8.

10. Petitioner has been refused registration due to Registrant's mark, which, on information and belief, and as alleged, Registrant is no longer entitled to maintain.

11. Cancellation of Registrant's mark will enable Petitioner to proceed with its registration.

Wherefore, Petitioner will continue to be precluded from the ability to proceed with registration due to the Registration No. 1358531, which as set forth in this Petition was invalidly renewed, and Petitioner petitions herein, and respectfully requests that said registration be cancelled as it relates to goods in Class 42.

This Petition for Cancellation is being filed-on-line with the Trademark Trial and Appeal Board along with the filing fee of \$300 for one class, as required in §2.6(a)(16).

Marc N. Blumenthal/
Marc N. Blumenthal
Attorney of Record for Petitioner