

ESTTA Tracking number: **ESTTA269579**

Filing date: **03/02/2009**

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	Hospitality, Inc.		
Entity	Corporation	Citizenship	California
Address	9558 Camino Ruiz San Diego, CA 92126 UNITED STATES		

Attorney information	Barry F. Soalt Procopio Cory Hargreaves & Savitch LLP 530 B Street, Suite 2100 San Diego, CA 92101 UNITED STATES docketing@procopio.com Phone:6195253865		
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Registration Subject to Cancellation

Registration No	3491840	Registration date	08/26/2008
Registrant	The Picnic People, Inc. 5757-A Sonoma Dr. Pleasanton, CA 94566 UNITED STATES		

Goods/Services Subject to Cancellation


Class 043. First Use: 1992/04/01 First Use In Commerce: 1992/04/01 All goods and services in the class are cancelled, namely: Catering of food and drinks
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77202056	Application Date	06/08/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PICNIC PEOPLE		

Design Mark	
Description of Mark	The mark consists of Mr Sun face with arms holding hot dog and bottle. With "Picnic People" across bottom.
Goods/Services	Class 041. First use: First Use: 1987/07/30 First Use In Commerce: 1987/07/30 Special event planning Class 043. First use: First Use: 1987/07/30 First Use In Commerce: 1987/07/30 Catering for the provision of food and beverages

Attachments	glj hosp canc.pdf (6 pages)(112857 bytes) 77202056#TMSN.jpeg (1 page)(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	/bfs/
Name	Barry F. Soalt
Date	03/02/2009

No. 77/202,056 for the mark PICNIC PEOPLE (and Design) in the same classes and for the same services.

2. The Picnic People, Inc. (“Registrant” or “Respondent”), a California corporation, is the current owner of record of U.S. Registration No. 3,491,840. Registrant’s address of record is The Picnic People, Inc., 5757 Sonoma Dr., Suite A, Pleasanton, CA 94566, United States.

3. Petitioner seeks to avoid and therefore cancel Registration No. 3,491,840, for the mark THE PICNIC PEOPLE CREATING FOND MEMORIES SINCE 1984 (and Design) which was cited by the U.S. Patent and Trademark Office as a bar to registration of Petitioner’s mark PICNIC PEOPLE (and Design) Application Serial No. 77/202,056, and which is therefore likely to be cited as a bar to Petitioner’s Application Serial No. 77/680,458, on the ground that there is an alleged likelihood of confusion between the marks under Section 2(d) of the Trademark Act.

4. As grounds for cancellation of Registration No. 3,491,840, Petitioner alleges, on information and belief, that the only reason Registrant has obtained registration for THE PICNIC PEOPLE CREATING FOND MEMORIES SINCE 1984 (and Design) is because Petitioner was handling its own applications in pro per, failed to renew prior existing registrations and pending applications, and therefore, Registrant’s later filed application advanced in front of Petitioner’s application in the prosecution process, and now operates as an impediment to the issuance of Petitioner’s marks.

5. Petitioner believes that it is or will be damaged by continued registration of the mark THE PICNIC PEOPLE CREATING FOND MEMORIES SINCE 1984 (and Design). Continued registration of this mark impairs Petitioner’s ability to hold itself out as the owner of the mark PICNIC PEOPLE and PICNIC PEOPLE (and Design) and to deny Petitioner the

opportunity to receive registration for said mark for its alleged services in application Serial Nos. 77/202,056 and 77/680,458.

6. Petitioner, Hospitality, Inc. was formed as a corporate entity on or about May 20, 1985, as Professional Picnic People, Inc., a California corporation and operated under that tradename until on or about April 26, 1994, when Petitioner filed a corporate name change to Hospitality, Inc., dba Picnic People. At all times herein, Lisa T. Richards has operated the company as its President. Prior thereto, Lisa T. Richards (formerly Lisa F. Taylor) operated the business, since 1978, initially in partnership with Gary James, and thereafter as a sole proprietorship of Lisa T. Richards until the Petitioner was incorporated in 1985. Petitioner, Hospitality, Inc., and its predecessors-in-interest are collectively referred to as "Petitioner."

7. Petitioner used the PICNIC PEOPLE tradename as a fictitious business name since at least as early as 1978. Petitioner has continuously used and advertised the PICNIC PEOPLE mark and the PICNIC PEOPLE name in connection with the promotion and sales of its services and business since at least as early as 1978. The aforesaid mark and name was at all times owned by Petitioner and the mark is well-known and recognized by a significant portion of the public as identifying the services and business of Petitioner, and therefore the marks and the goodwill associated therewith are valuable assets of the Petitioner and have acquired a secondary meaning.

8. Petitioner's first use of the PICNIC PEOPLE name and mark commenced in 1978, long prior to Respondent's alleged date of first use as THE PICNIC PEOPLE CREATING FOND MEMORIES SINCE 1984 (and Design), and long prior to Respondent's filing its trademark application for that mark, filed December 10, 2007, and long prior to Respondent's first use of the words "The Picnic People" in connection with any tradename use.

9. Petitioner's use of its PICNIC PEOPLE mark and name, since at least as early as 1978, creates common law rights in the mark and name PICNIC PEOPLE, which rights are superior to Registrant's rights.

10. Respondent's mark, THE PICNIC PEOPLE CREATING FOND MEMORIES SINCE 1984 (and Design), so resembles Petitioner's PICNIC PEOPLE mark and name as to create confusion and mistake or to deceive to the public when used with or to promote the sales of Respondent's similar services as identified in its registration; that the foregoing use by Respondent of the mark in Registration No. 3,491,840 is likely to create confusion, mistake or deception that Respondent's services are identified and offered by, sponsored by, or in some way associated with Petitioner, resulting in loss of revenue to Petitioner and damage to its reputation and goodwill.

11. Upon information and belief, Respondent knew at the time it filed its application for "THE PICNIC PEOPLE CREATING FOND MEMORIES SINCE 1984 (and Design)" that the mark "PICNIC PEOPLE" was conceived of and used by Petitioner prior to Respondent's first use thereof; that any use by Respondent inured to the benefit of Petitioner and was derived through use of the mark and name by the Petitioner, and if Respondent's registration is allowed to become incontestable, it will preclude Petitioner, the prior user of the mark, from obtaining registration thereof; that this inability to obtain registration results in loss of revenue to Petitioner and damages its goodwill by precluding Petitioner from successfully engaging in certain activities, and creates the likelihood of public confusion as to ownership of the PICNIC PEOPLE mark by Petitioner and its licensees.

12. Upon information and belief, Petitioner's services and Respondent's services are overlapping, and the services of both parties travel in the same or similar channels of trade, in overlapping geographic areas, and are directed to the same classes of potential customers.

13. Petitioner has spent substantial time, effort and money to promote its services under its PICNIC PEOPLE and PICNIC PEOPLE (and Design) marks and tradename and these marks have obtained substantial goodwill and recognition in the marketplace.

14. On information and belief, Respondent has not used the mark depicted in Registration No. 3,491,840 as of the date of first use recited in its registration.

WHEREFORE, Petitioner believes that it is and will be damaged by continued registration of THE PICNIC PEOPLE CREATING FOND MEMORIES SINCE 1984 (and Design), in Registration No. 3,491,840, and, therefore, requests cancellation of the Registration on the ground that Petitioner has long prior rights to the mark PICNIC PEOPLE than any first use recited by Registrant in its registration, and that such rights predate any use of The Picnic People by Registrant as a tradename.

Respectfully Submitted,



Attorney for Petitioner
HOSPITALITY, INC.

Dated: March 2, 2009

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Attorney Docket: 105805-5

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITION FOR
CANCELLATION of U.S. Reg. No. 3,491,840 is being mailed on March 2, 2009 by First Class
Mail to Registrant as follows:

KOEBERER, JOHN
THE PICNIC PEOPLE, INC.
5757 SONOMA DR STE A
PLEASANTON, CA 94566-7758

Dated: March 2, 2009

By: 
Geena L. Jackson