

ESTTA Tracking number: **ESTTA310014**

Filing date: **10/06/2009**

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	Manhattan Construction Company		
Entity	Corporation	Citizenship	Oklahoma
Address	5601 South 122nd East Avenue Tulsa, OK 74146 UNITED STATES		

Attorney information	Jennifer B. Rader McAfee & Taft 211 North Robinson Tenth Floor - 2 Leadership Square Oklahoma City, OK 73102 UNITED STATES jenna.rader@mcafeetaft.com, joyce.stribling@mcafeetaft.com Phone:(405) 235-9621
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### Registration Subject to Cancellation

Registration No	2948795	Registration date	05/10/2005
Registrant	Manhattan Skyline Construction Corp. c/o The Zucker Organization 101 West 55th Street New York, NY 10019 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 037. First Use: 2005/01/03 First Use In Commerce: 2005/01/03 All goods and services in the class are cancelled, namely: general contracting services, renovation and rehabilitation of buildings
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### Grounds for Cancellation

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

U.S. Application No.	77526349	Application Date	07/18/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MANHATTAN CONSTRUCTION COMPANY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 037. First use: First Use: 1907/12/17 First Use In Commerce: 1907/12/17 building construction services

U.S. Application No.	77478127	Application Date	05/19/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MANHATTAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1907/12/17 First Use In Commerce: 1907/12/17 building construction services		

Attachments	77526349#TMSN.jpeg ( 1 page )( bytes ) 77478127#TMSN.jpeg ( 1 page )( bytes ) Petition for Cancellation.pdf ( 5 pages )(193400 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	/jrader/
Name	Jennifer B. Rader
Date	10/06/2009



1. Petitioner conducts and has conducted a wide variety of construction services throughout the United States.
2. Petitioner has been using the marks MANHATTAN and MANHATTAN CONSTRUCTION COMPANY in interstate commerce in the United States in association with construction services since at least as early as December 17, 1907.
3. Petitioner filed Application Serial No. 77/526,349 to register the mark MANHATTAN CONSTRUCTION COMPANY for “building construction services” on July 18, 2008, claiming a date of first use of the mark (anywhere and in interstate commerce) at least as early as December 17, 1907. Petitioner also filed an Application Serial No. 77/478,127 to register the mark MANHATTAN for “building construction services” on May 19, 2008, claiming a date of first use of the mark (anywhere and in interstate commerce) at least as early as December 17, 1907.
4. In office actions mailed on April 8, 2009, the United States Patent and Trademark Office (“USPTO”) refused registration of Petitioner’s applications (Serial Nos. 77/526,349 and 77/478,127) based on Section 2(d) of the Trademark Act, stating that the marks are likely to cause confusion with United States Registration No. 2,948,795 for the mark “MANHATTAN SKYLINE CONSTRUCTION COMPANY” in association with “general contracting services, renovation and rehabilitation of buildings.”
5. Upon information and belief, Registrant did not use the MANHATTAN SKYLINE CONSTRUCTION CORP. mark prior to January 3, 2005. Registrant

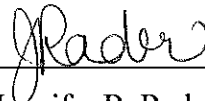
filed intent-to-use Application Serial No. 76/401,724 for the MANHATTAN SKYLINE CONSTRUCTION CORP. mark on April 30, 2002. Petitioner began using the MANHATTAN CONSTRUCTION COMPANY mark at least as early as December 17, 1907, several decades before the date of first use alleged by Registrant and the filing date of Registrant's intent-to-use application that matured into the Registration. Accordingly, Petitioner clearly has priority in this case.

6. According to the Examining Attorney for Petitioner's applications, Petitioner's MANHATTAN and MANHATTAN CONSTRUCTION COMPANY marks are very similar in sound, appearance and meaning to the mark in the Registration. Furthermore, the Examining Attorney has taken the position that the services associated with Petitioner's MANHATTAN and MANHATTAN CONSTRUCTION COMPANY marks, "building construction services," are closely related to the services recited in the Registration, namely, "general contracting services, renovation and rehabilitation of buildings."
7. Based on Trademark Act Section 2(d), Applicant's mark and Registrant's mark are likely to cause confusion among purchasers who are likely to believe that Registrant's services are in some way associated or connected with or sponsored, authorized or warranted by Petitioner.
8. If the subject registration is not cancelled, Registrant will maintain statutory rights to the MANHATTAN SKYLINE CONSTRUCTION CORP. mark that will conflict with and substantially degrade Petitioner's rights in its mark. Petitioner's goodwill and reputation are jeopardized by Registrant's registration of the

MANHATTAN SKYLINE CONSTRUCTION CORP. mark. Poor quality of Registrant's services will greatly harm Petitioner's reputation and translate to lost business. Furthermore, Registrant will be unjustly enriched and unfairly reap the benefit of Petitioner's goodwill and reputation.

9. If Registrant is permitted to retain the registration sought to be cancelled, a cloud will be placed on Petitioner's title in and to its MANHATTAN CONSTRUCTION COMPANY and MANHATTAN marks and on its right to enjoy the free and exclusive use thereof in connection with its services, all to the great injury of Petitioner.
10. For the reasons set forth herein, Petitioner believes and asserts that it is being and will continue to be damaged by Registration No. 2,948,795. Accordingly, the Petitioner prays that this Petition for Cancellation be sustained and that Registration No. 2,948,795 be cancelled in its entirety.

Respectfully submitted,



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Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing PETITION FOR CANCELLATION has been served on the following by mailing said copy this 6<sup>th</sup> day of October, 2009, via first class, certified mail, return receipt requested, to:

Manhattan Skyline Construction Corp.  
c/o The Zucker Organization  
101 West 55<sup>th</sup> Street  
New York, NY 10019

Robert B. G. Horowitz, Esq.  
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