

ESTTA Tracking number: **ESTTA318339**

Filing date: **11/23/2009**

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	Total Hockey, Inc.		
Entity	Corporation	Citizenship	Missouri
Address	5833 Suemandy Drive St. Peters, MO 63376 UNITED STATES		

Attorney information	Julie C. Jennings Senniger Powers LLP 100 North Broadway, 17th Floor St. Louis, MO 63102 UNITED STATES ustrademarks@senniger.com, jjennings@senniger.com Phone:314-345-7000		
----------------------	--	--	--

Registration Subject to Cancellation

Registration No	1166861	Registration date	08/25/1981
Registrant	HERMAN'S WORLD OF SPORTS, INC. 1055 STEWARD AVENUE BETH PAGE, NY 11741 UNITED STATES		

Goods/Services Subject to Cancellation

Class 042. First Use: 1979/03/14 First Use In Commerce: 1979/12/12 All goods and services in the class are cancelled, namely: Retail Department Store Services

Grounds for Cancellation

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

Attachments	01109301.PDF (3 pages)(18887 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	/jcyj/
Name	Julie C. Jennings
Date	11/23/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Reg. No. 1,166,861

Mark: TOTAL SPORTS

International Class: 42

Issued: August 25, 1981

Total Hockey, Inc.)
)
Petitioner,)
)
vs.)
)
Herman's World of Sports, Inc.)
)
Respondent.)

Cancellation No.: _____

CERTIFICATE OF ELECTRONIC SUBMISSION

I hereby certify that this Petition for Cancellation is being submitted electronically through the Electronic System for Trademark Trials and Appeals (ESTTA) on this 23rd day of November, 2009.



Julie C. Jennings

PETITION FOR CANCELLATION

Total Hockey, Inc., a Missouri corporation having an address at 5833 Suemandy Drive, St. Peters, Missouri 63376 (hereinafter referred to as "Petitioner"), believes it has been and will be damaged by Registration No. 1,166,861 for the mark TOTAL SPORTS, and hereby petitions for cancellation of said registration. The TOTAL SPORTS registration was issued on the Principal Register on August 25, 1981 for retail department store services, in International Class 42.

As grounds for cancellation, Petitioner alleges on knowledge as to itself and otherwise upon information and belief, as follows:

1. Herman's World of Sports, Inc. ("Respondent") is the record owner of registration number 1,166,861. To the best of Petitioner's knowledge, Respondent's address is 1055 Steward Avenue, Beth Page, New York 11741.

2. Respondent's registration for TOTAL SPORTS, registration number 1,166,861, was granted on August 25, 1981.
3. To the best of Petitioner's knowledge, Respondent has abandoned said registered mark by discontinuing use of the TOTAL SPORTS mark for a period of at least three years with no intent to resume said use. Petitioner is unable to locate any retail stores operated by respondent after a diligent search. Petitioner's investigation reveals that the Secretary of State of Nevada shows the corporate status for Respondent as "revoked." Petitioner further notes that Respondent's last renewal of the TOTAL SPORTS registration in 2001 was based on excusable non-use at that time, and it does not appear that any use has resumed.
4. Petitioner, since at least as early as July 12, 1999, has continuously used the mark TOTAL HOCKEY in connection with retail store services in the field of hockey. Petitioner has filed an application for registration of its mark TOTAL HOCKEY, Serial No. 77/708,815, and consumers have come to associate Petitioner's TOTAL HOCKEY mark with the type of services identified in the pending application.
5. Petitioner's pending TOTAL HOCKEY application has been refused on the grounds that it is likely to be confused with the abandoned TOTAL SPORTS mark.
6. Petitioner is likely to be damaged by continuance of said registration in that Petitioner's continued and legal use of its TOTAL HOCKEY mark and Petitioner's application for registration of its mark will be impaired by the continued registration of the abandoned mark TOTAL SPORTS.

WHEREFORE, Petitioner prays that Reg. No. 1,166,861 be cancelled.

Respectfully submitted,
TOTAL HOCKEY, INC.

By:  _____

Julie C. Jennings

Paul I. J. Fleischut

SENNIGER POWERS LLP

100 North Broadway, 17th Floor

St. Louis, Missouri 63102

(314) 345-7000

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that a true and complete copy of the foregoing Petition for Cancellation has been served on Respondent's correspondent address of record in the Trademark Office by mailing said copy on this 23rd day of November 2009 via First Class Mail, postage prepaid, in an envelope addressed to:

Docket Department
Morgan & Finnegan LLP
3 World Financial Center
New York NY 10281-2101

 _____
Julie C. Jennings