

ESTTA Tracking number: **ESTTA343794**

Filing date: **04/23/2010**

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	Joseph M Doherty		
Entity	Individual	Citizenship	UNITED STATES
Address	111 Littleworth Lane Sea Cliff, NY 11579 UNITED STATES		

Attorney information	Rocco S. Barrese Dilworth & Barrese, LLP. 1000 Woodbury Road, Suite 405 Woodbury, NY 11797 UNITED STATES sbarrese@dilworthbarrese.com Phone:516-228-8484		
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Registration Subject to Cancellation

Registration No	3549686	Registration date	12/23/2008
Registrant	Cheaper Peepers LLC 7815 Airport Highway Pennsauken, NJ 08110 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2005/12/01 First Use In Commerce: 2005/12/01 All goods and services in the class are cancelled, namely: Retail store services featuring eyewear; Wholesale stores featuring eyewear

Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77890408	Application Date	12/10/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CHEAPER PEEPERS		

Design Mark	CHEAPER PEEPERS
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1991/02/00 First Use In Commerce: 1991/02/00 Retail store services featuring eyewear; Online retail store services featuring eyewear Class 042. First use: First Use: 1996/12/00 First Use In Commerce: 1996/12/00 Optical laboratory services

Attachments	77890408#TMSN.jpeg (1 page)(bytes) Petition for Cancellation.pdf (3 pages)(425199 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	/rsb/
Name	Rocco S. Barrese
Date	04/23/2010

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

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Joseph Mark Doherty, : In re the matter of Trademark Reg. No. 3549686
: :
Petitioner : Mark: CHEAPER PEEPERS
: Reg. Date: December 23, 2008
v. : Filed: May 2, 2008
: Published: October 7, 2008
Cheaper Peepers LLC, :
: Cancellation No. _____
Registrant :
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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION OF U.S. REGISTRATION NO. 3,549,686

Sir:

Joseph Mark Doherty ("Petitioner"), an individual, residing at 111 Littleworth Lane, Sea Cliff, New York 11579, believes that he will be damaged by U.S. Registration No. 3,549,686 CHEAPER PEEPERS ("the '686 registration"), and hereby petitions to cancel same, on the following grounds:

1. To the best of Petitioner's knowledge, the name and address of the current owner of the '686 registration is Cheaper Peepers LLC ("Registrant"), a limited liability company organized and existing under the laws of the State of New Jersey, having an address at 7815 Airport Highway, Pennsauken, New Jersey 08110. This is the most recent information as to Registrant from the USPTO TARR system.

2. Petitioner is the owner of pending U.S. application Serial No. 77/890,408 for the mark CHEAPER PEEPERS in connection with retail store services featuring eyewear; online retail store services featuring eyewear in International Class 35 and optical laboratory services in International Class 42.

3. U.S. Registration No. 3,549,686 has been cited by the United States Patent and Trademark Office as a bar against registration of the Petitioner's mark, CHEAPER PEEPERS, in said pending U.S. application.

4. Registrant claims a date of first use of its trademark in commerce of December 1, 2005 and first use anywhere of December 1, 2005 in association with retail store services featuring eyewear; Wholesale stores featuring eyewear, in International Class 35.

5. Petitioner has not abandoned the trademark CHEAPER PEEPERS and, together with its predecessor(s) in interest, has continuously used the trademark CHEAPER PEEPERS in association with retail store services featuring eyewear in International Class 35, since at least as early as February 1991.

6. Petitioner, by use of its mark since at least February 1991 in connection with its services, has established prior use of the mark CHEAPER PEEPERS in connection with its services as associated with Petitioner. The '686 registration will cause confusion as to the source of Petitioner's services and will harm the goodwill established by Petitioner in its trademark.

7. Upon information and belief, Registrant is no longer using the mark of the '686 registration.

8. Upon information and belief, Registrant has abandoned the mark of the '686 registration.

WHEREFORE, Petitioner requests U.S. Registration No. 3,549,686 be cancelled and that this Petition For Cancellation be sustained in favor of Petitioner.

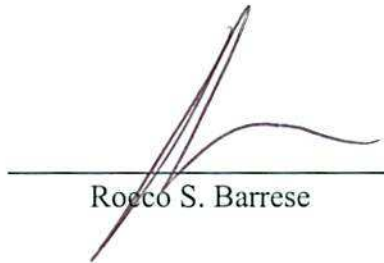
Respectfully submitted,

Date: April 23, 2010

Rocco S. Barrese
Attorney for Petitioner
DILWORTH & BARRESE LLP
1000 Woodbury Road
Woodbury, NY 11797
(516) 228-8484
(516) 228-8516

CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the foregoing PETITION FOR CANCELLATION OF U.S. REGISTRATION NO. 3,549,686 has been duly served on the Registrant by mailing a copy of the same VIA FIRST CLASS MAIL to its attorney of record, Francis J. Duffin, Esq., Wiggin and Dana LLP, P.O. Box 1832, One Century Tower, New Haven, CT 06508-1832 on April 23, 2010.



Rocco S. Barrese