

ESTTA Tracking number: **ESTTA462679**

Filing date: **03/20/2012**

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	Eateries, Inc.		
Entity	Corporation	Citizenship	Oklahoma
Address	1101 W. Waterloo Road Edmond, OK 73025 UNITED STATES		

Attorney information	Christopher P. Bussert Kilpatrick Townsend & Stockton LLP 1100 Peachtree Street Ste. 2800 Atlanta, GA 30309 UNITED STATES cbussert@ktslaw.com, lralls@ktslaw.com, kteilhaber@ktslaw.com, tadmin@ktslaw.com		
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Registration Subject to Cancellation

Registration No	4104723	Registration date	02/28/2012
Registrant	Garfield's Place, LLC PO Box 4454 Dalton, GA 30719 UNITED STATES		

Goods/Services Subject to Cancellation

Class 043. First Use: 2011/04/08 First Use In Commerce: 2011/04/08
All goods and services in the class are cancelled, namely: Bar and restaurant services


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.	85357383	Application Date	06/27/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GARFIELD'S RESTAURANT PUB		

Design Mark	
Description of Mark	The mark consists of the stylized word "Garfield's" in a slight arcing pattern in the color yellow outlined with red and black, below that word in a slight arcing pattern in black letters are the words "Restaurant Pub" with a black circle symbol in between the two words.
Goods/Services	Class 043. First use: First Use: 1984/11/01 First Use In Commerce: 1984/11/01 Restaurant and bar services

U.S. Application No.	85488416	Application Date	12/06/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GARFIELD'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1984/11/01 First Use In Commerce: 1984/11/01 Bar and restaurant services		

Attachments	85357383#TMSN.jpeg (1 page)(bytes) 85488416#TMSN.jpeg (1 page)(bytes) Petition for Cancellation -- Eateries v. Garfield_s Place LLC.PDF (5 pages)(176964 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	/Christopher P. Bussert/
Name	Christopher P. Bussert
Date	03/20/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

EATERIES, INC.,)
)
Petitioner,)
) Cancellation No. _____
v.) Registration No. 4,104,723
) Mark: GARFIELD'S PLACE "LET
GARFIELD'S PLACE, LLC,) THE GOOD TIMES FLOW" and
) Design
Registrant.)

PETITION FOR CANCELLATION

Petitioner Eateries, Inc. ("Petitioner"), an Oklahoma corporation, whose business address is 1101 W. Waterloo Road, Edmond, Oklahoma 73025, believes that it is being and will continue to be damaged by the registration of Registrant's GARFIELD'S PLACE "LET THE GOOD TIMES FLOW" and design mark (Registration No. 4,104,723) and hereby petitions to cancel the same. The grounds for cancellation are as follows:

1.

On information and belief, Garfield's Place, LLC ("Registrant") is a limited liability company of the state of Georgia, whose business address is P.O. Box 4454, Dalton, Georgia 30719. Registrant applied for and recently obtained a federal registration for the GARFIELD'S PLACE "LET THE GOOD

TIMES FLOW" and design mark ("Registration No. 4,104,723") in the United States Patent and Trademark Office for "bar and restaurant services" in International Class 43.

2.

Since at least November 1, 1984, Petitioner, through its predecessor and their respective licensees, has been, and is currently, using the GARFIELD'S mark in word and design form in connection with bar and restaurant services. The use of the GARFIELD'S mark by Petitioner, its predecessor and their respective licensees, has been valid and continuous since the foregoing date of first use and has not been abandoned. As a result of the foregoing, Petitioner has developed a well-recognized reputation for the excellence of services offered under the GARFIELD'S mark.

3.

As a result of the extensive use by Petitioner, its predecessor and their respective licensees, of the GARFIELD'S mark since at least as early as November 1, 1984, Petitioner's GARFIELD'S mark has become symbolic of the extensive goodwill and customer recognition established by Petitioner, its predecessor and their respective licensees by virtue of the expenditure of significant amounts of time and effort in

advertising and promoting the services under the GARFIELD'S mark. The GARFIELD'S mark thus identifies Petitioner and its services.

4.

Petitioner has filed an application to register its GARFIELD'S RESTAURANT PUB and design mark for "restaurant and bar services" under Application Serial No. 85/357,383. That application was suspended on November 29, 2011 in view of Registrant's then pending application to register the GARFIELD'S PLACE "LET THE GOOD TIMES FLOW" and design mark application. Petitioner also owns a pending application for the GARFIELD'S word mark for "bar and restaurant services" under Application Serial No. 85/488,416.

5.

On information and belief, Registrant did not begin use of its GARFIELD'S PLACE "LET THE GOOD TIMES FLOW" and design mark until April 8, 2011.

6.

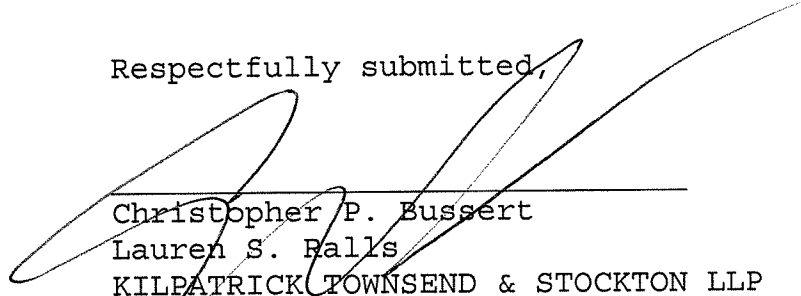
The continued existence of Registration No. 4,104,723 is inconsistent with the rights Petitioner possesses in its GARFIELD'S and GARFIELD'S RESTAURANT PUB and design mark and, therefore, Petitioner is damaged by the continued presence of

Registration No. 4,104,723 with the presumptions afforded Registrant under the Lanham Act, § 7(b).

WHEREFORE, Petitioner respectfully prays for the cancellation for the Registration No. 4,104,723.

Date: March 20, 2012

Respectfully submitted,



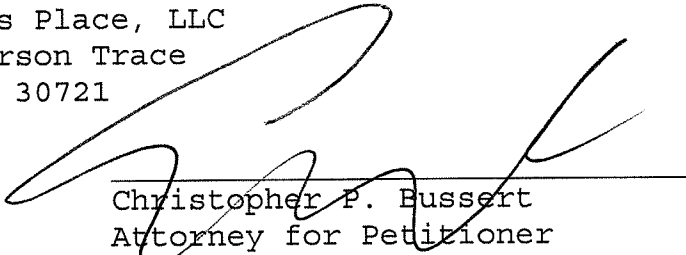
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Attorneys for Petitioner
Eateries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION FOR CANCELLATION was served on Registrant on March 20, 2012 via first class mail to:

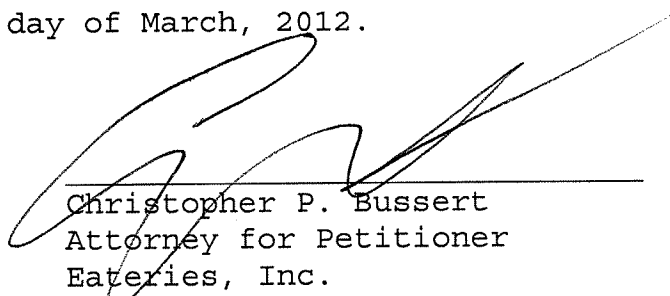
Melissa Goble
Garfield's Place, LLC
534 Jefferson Trace
Dalton GA 30721



Christopher P. Bussert
Attorney for Petitioner
Eateries, Inc.

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing PETITION FOR CANCELLATION is being filed electronically with the PTO via ESTTA on this 20th day of March, 2012.



Christopher P. Bussert
Attorney for Petitioner
Eateries, Inc.